are made in four copies, three of which go to the factory; one remains here, to act as a control that such goods have been ordered. One copy comes back to us after the goods have been shipped to us; the other two are retained in the factory files.

Q. And do you retain one of those copies in your files? A. We do.

Q. With respect to the two copies which you have in your hand, where did they come from? A. These originated in Chicago, were sent to St. Louis, and then returned to Chicago.

Q. And where have they been kept since? A. In our files.

Q. And are those records which have been kept by this branch in the regular course of business? A. They are.

Q. On each of these copies I notice that there is a style number listed; is that the catalog number of the garment ordered? A. They are.

Q. And these orders are also serially numbered, are they not? A. They are.

Q. On order number 4271 there is listed style number 41TDS29; can you state what garment that is? A. That is our white, long sleeve, diagonal zipper closing smock. Q. And is that of the kind exemplified in Exhibit 12 for identification? A. That is the same garment.

Q. Referring to order number 4191, I notice that is dated April 30, 1943, is it not? A. That's right.

Q. That bears the one item, style number 325; what garment does that number call for? A. That calls for our style 325, which is a short sleeve, diagonal closing zipper smock, as illustrated on page 4 of our professional apparel catalog, Exhibit No. 1.

Q. Now, in what respect does the garment number 325 differ, if at all, from the garment number 41TDS28? A.

It is a short sleeve garment, the same as 41TDS28, except that it is made of a tan material, rather than white.

Mr. Horton: I will ask that these orders be marked for identification as Defendants' Exhibits 13 and 14.

(Defendants' Exhibits Nos. 13 and 14 marked for identification by the Reporter and Notary.)

Mr. Horton: Q. When your company adopts a style number for a particular garment, does that style number ever get into any different garment? A. Not that I know of.

Q. When you bring out a new garment, do you have a new number to apply to it? A. A new number for every new garment brought out.

Mr. Horton: You may examine.

CROSS EXAMINATION

By Mr. Tjoflat:

Q. Mr. Karger, I believe you stated your memory was that this catalog was printed in 1941. A. That's right.

Q. Do you have any distinct recollection that you actually had possession of that in 1941? A. Not definitely, no; not at this late date, I couldn't say that we actually received it. But we do receive them right after they are printed; they were received shortly after the copyright date printed.

Q. What does that copyright indicate to you? A. Indicates that it was printed and registered.

Q. Do you have a registration certificate, to show that it was copyrighted? A. That probably was held in St. Louis.

Q. You don't know that the copyright was registered? A. No; we would have no record of that here. That is all done in our St. Louis Office.

Q. When you say it is all done in your St. Louis office, are you sure it is done? A. Yes, I am sure it is done.

Q. Do you know of your own knowledge that it was done? A. Yes, I do.

Q. You do? A. I know it was done in St. Louis.

Q. Do you know that the copyright was registered? A. I don't know that it was registered.

Q. This garment identified as Exhibit No. 11, this flap sort of overlaps and makes a double-breasted robe, does it not?

Mr. Horton: I object to that, as not cross examination, and not pertinent to this deposition. If you want to ask him as to particular construction, you can go ahead and make him your own witness.

Mr. Tjoflat: You produced this garment.

Mr. Slutz: Get your answer.

Mr. Tjoflat: Read the question, please.

(Pending question read by the Reporter and Notary.)

The Witness: A. I wouldn't say it is double-breasted, no. That flap is intended to protect the zipper.

Mr. Tjoflat: Q. But it does overlap; how much would you say it overlaps here? A. I would say about three-quarters of an inch, to possibly an inch.

Q. So that there is no single butt joint there where the overlap overlies the zipper? A. No.

Q. And where would the center line be on that jacket? A. Right there. (Indicating)

Q. Where does the zipper come with respect to the center line of the collar? A. With the collar?—The zipper starts in the center of the collar and slants to the right.

Q. These garments have all been made like that? A. That's right.

Mr. Horton: You are referring to that Exhibit 11, are you?

Mr. Tjoflat: Exhibit 11.

Mr. Slutz: Q. Mr. Karger, you say that you have been manager of the Chicago branch for the last three years?

Mr. Horton: I object to two counsel examining the same witness here. If one counsel is going to cross examine, why, all right; but not two.

Mr. Slutz: We have two plaintiffs.

Mr. Horton: They are joint plaintiffs; and the rule is, where two parties are joint plaintiffs they are represented by one counsel in the examination of a single witness.

Mr. Slutz: All right.

Mr. Tjoflat: Q. Mr. Karger, what were your duties prior to three years from today?

The Witness: A. I was a salesman.

Q. You had no managerial duties to perform? A. Not at all.

Q. Prior to three years ago from date, you didn't keep records under your own jurisdiction, or records were not kept under your jurisdiction? A. None of the firm's records, no.

Q. Now, as to Exhibit 11, where did you obtain it? A. It was obtained from our St. Louis office.

Q. By whom was it obtained from the St. Louis office?

Mr. Horton: If you know; if you don't know, say so.

The Witness: A. I don't know, really.

Mr. Horton: To clear this up——

Mr. Tjoflat: Just a moment.

Mr. Horton: Well, this is not cross examination; I object.

The Witness: A. All I know, it was one of our jackets, and was presented in here by Mr. Horton, I believe.

Mr. Tjoflat: Q. That is, you got it from Mr. Horton, is that right? A. That's right.

Mr. Horton: Do you want to know where it came from?

Mr. Tjoflat: The witness is testifying.

Mr. Horton: You have gone into something that is not cross examination; I thought maybe you were interested.

Mr. Tjoflat: Let the record show that the defendants produced Exhibit 11 for identification; they made no effort to show where it came from, or who got it.

Mr. Horton: It was not produced for that purpose, it was produced to illustrate the garments manufactured and sold by the Angelica Jacket Company. The fact is that the garment was sent from the Angelica Jacket Company to counsel for the defendants in this case, and it was produced by counsel for the defendants to Mr. Karger, to find out whether or not, to his knowledge, such garments had been sold by the Chicago branch, and whether the Chicago branch have any records of such sales.

Mr. Tjoflat: I move that the statement made by the counsel Horton be stricken, and that he is testifying without being under oath, or being sworn as a witness. Furthermore, he was not named in the notice for the taking of depositions.

Mr. Horton: My statement was not testimony. But if you want to inquire about where we got these things, I want you to know that I am perfectly willing to tell you.

Mr. Tjoflat: Q. Mr. Karger, you don't, of your own knowledge, know when this particular garment identified as Exhibit No. 11 was made?

The Witness: A. No, I do not.

Q. Mr. Karger, in your business of designing garments or style numbers, do you always keep the same style number, regardless of modifications or changes in the garment? A. We do.

Q. In other words, the garment may change in some respects, but the style number will not change? A. The garment will never change. You mean—you are trying to say that if we change the style, would we also change the number?

Q. That's right. A. That is correct.

Q. Is that true in all cases of minor or major changes in the style? A. That is true in all cases, to my knowledge.

Q. Now I show you your catalog——

I hand the Reporter a catalog captioned "Angelica Uniforms," and ask him to mark it as Plaintiff's Exhibit 1 for identification.

(Plaintiff's Exhibit No. 1 marked for identification by the Reporter and Notary.)

Mr. Tjoflat: Q. Now I show you this catalog, Plaintiff's Exhibit 1 for identification, and point out to you the garments identified as C and D on page 56, and ask you to identify those by their respective style numbers.

Mr. Horton: I object to this; it is improper, it is not cross examination; and it is not shown to be a catalog being relevant or pertinent to any of the issues in this case. It was produced, as I understand, as a current catalog at any time prior to the Brohard patent in suit.

Mr. Tjoflat: You may answer the question.

The Witness: A. This illustration is illustrated wrong. The mistake was found after—And they discovered the fact that illustration was wrong in the present catalog; but the factory advertising department did not feel that, because of changing it to the correct designation, was important enough to make the change in the catalog.

Mr. Tjoflat: Q. What was the mistake in the printing on that? A. The illustration of the zipper on the wrong side.

Q. The zipper shown on what side? A. It is shown in this illustration as being on the left; it was really on the right. I believe that is shown on the garment. Yes, there it is. (Indicating) The illustration, whoever did it, made a mistake. They discovered it shortly after the catalog was finished, too late to make the change. The illustration as shown in that professional apparel catalog, Defendants' Exhibit 1, is correct, the way the garments are being produced today.

Mr. Horton: Professional apparel catalog, you are referring to Defendants' Exhibit 1? A. That is correct.

Mr. Tjoflat: Q. Mr. Karger, I show you Defendants' Exhibit 5 for identification, and ask you if that is an invoice of a sale of the garment which it purports to be?

The Witness: A. Yes;—this is not a sale, it is a replacement for which we are making a charge, replacement of a zipper, for which there is a charge.

Q. So that merely shows the charge made for repairing a zipper on a garment? A. On our garment; we don't replace zippers on anybody else's garments.

Q. And this white slip that is attached to Defendants' Exhibit 5 for identification; namely, number 129690, is your own record? A. That is our own record of having received the return of one of our garments from one of our customers.

Q. But the customer who returned it, his name does not appear on there, does it? A. His name does appear on there.

Q. But I mean anything on there,—his signature does not appear on here? A. It is our own record.

Q. That's right. A. Coming through the mail.

Q. Mr. Karger, do you have available in stock either one or both of the garments identified as Defendants' Ex-

hibits 11 and 12, respectively, for identification? A. I have this one here; (indicating) we have duplicates of No. 12 in stock. No. 11, we don't manufacture any longer as stock garments.

Q. Could you supply me with a garment such as Exhibit 11? A. Not from our stock. I don't know whether any of the other branches would have one. We discontinued manufacturing that some years ago.

Mr. Tjoflat: Off the record.

(Discussion not for the record.)

Mr. Tjoflat: Cross examination closed.

REDIRECT EXAMINATION

By Mr. Horton:

Q. You are present manager of the Chicago branch, are you not? A. I am.

Q. And the records of the Chicago branch are at present under your control, are they not? A. They are.

Q. You were asked by counsel about the construction of Exhibit 11, but you were not asked about Exhibit 12: Where does the zipper come up at the top of that garment, relative to the center line of the collar?

Mr. Slutz: Objection, on the ground that the garment speaks for itself.

The Witness: A. Considerably to the right of the center line of the collar.

Mr. Horton: Q. And is there any flap covering the zipper on Exhibit 12? A. There is no flap on Exhibit 12.

Mr. Horton: That is all, Mr. Karger.

Mr. Slutz: No recross examination.

And further deponent saith not.

Mr. Horton: Do you want to waive the signature of this witness?

Mr. Tjoflat: We customarily waive.

Mr. Slutz: It is all right with me.

Mr. Horton: I will call Miss Annebelle Wright.

Annebelle Wright,

called as a witness on behalf of the Defendants, having been first duly sworn to testify the truth, the whole truth and nothing but the truth, in answer to oral interrogatories propounded, deposed and testified as follows:

DIRECT EXAMINATION

By Mr. Horton:

Q. What is your full name, please? A. Annebelle Wright.

Q. And where do you live? A. At 1400 East 55th Place.

Q. Chicago? A. In Chicago.

Q. What is your occupation? A. I am secretary to Mr. Karger.

Q. At the Angelica Jacket Company? A. Yes, in Chicago.

Q. And how long have you been employed by the Angelica Jacket Company? A. Since April, 1940.

Q. 1940? A. That's right.

Q. Have your duties included the preparation of any of the records of the company? A. Yes, they have.

Q. Are you familiar with the practice of making out invoices on orders? A. Yes, I am.

Q. And have you done that work yourself? A. Yes, I have.

Q. Do you know where such records are kept by the company? A. Well, at that time they were kept here; they are kept in St. Louis now. We keep one office copy here now.

Q. And you have since 1940 kept one office copy of invoices at the Chicago branch? A. Yes, we have.

Q. Do you know how long you keep such invoices? A. I think, around five years.

Q. You are familiar, are you not, with where this group of invoices, Defendants' Exhibits 2 to 10 for identification, inclusive, came from, are you not? A. Yes.

Q. Where were those kept? A. They were kept in our files, under the customer's name.

Q. And when were they brought up here for purposes of this deposition? A. About a week ago; a week or ten days ago. I don't know the exact date.

Q. Do you still keep invoices in the same manner in which those invoices were kept? A. Yes, we do.

Q. Are they serially numbered? A. Yes, they are.

Q. Do they bear the date of the sale or shipment? A. Yes, they do.

Q. Do they bear the name of the person to whom the goods are shipped or sold? A. Yes, they do.

Q. A copy of that invoices, or several copies are sent to your St. Louis office; is that true? A. Well, not now; they were at that time, yes.

Q. You say at that time; you are referring to what year? A. Up to 1945, when our office was changed.

Q. Up to 1945 you did send the copies to St. Louis? A. Yes.

Q. And would they bear the same serial number? A. Yes, they would.

Q. And were the copies and the originals all made at the same time, on the typewriter? A. Yes, on a billing machine.

Q. Are you familiar with the stock numbers of the items sold by your company? A. Yes, I am.

Q. On these invoices, Exhibits 2 to 10 for identification there is reference to a smock 377 several times; what is the smock 377? A. It is a zipper closing smock, elbow length sleeves, used by professional men.

Q. And there is reference in here to smocks numbers 41TDS28; what style jacket is that? A. That also is a zipper closing smock, with a zipper down the side, elbow length sleeve.

Q. I call your attention to Defendants' Exhibit 12 for identification, and ask you if you are familiar with such a garment? A. Yes, I am.

Q. And has such a garment been sold by your company? A. Oh, yes.

Q. And can you state how long, of your own knowledge? A. Ever since I am with them.

Q. Can you give us the style number of Defendants' Exhibit 11 for identification? A. It is 41TDS29.

Q. Have there been any changes made in that since you first knew of its sale? A. No.

Q. Is that garment still manufactured and sold by your company? A. Yes, it is.

Q. I call your attention to the garment Defendants' Exhibit 11 for identification, and ask you if you are familiar with that garment? A. Yes, I am.

Q. Can you state what the stock number is, of that garment? A. 377.

Q. Can you state, of your own knowledge, when that garment was first sold and manufactured by your company? A. It was brought out in 1941; and we had sales in 1941.

Q. Is that garment still manufactured by your company? A. No, it is not.

Q. Is that a discontinued model? A. That's right.

Q. Is that the same garment as is referred to as 377 in the invoices Exhibits 2 to 10 for identification? A. Yes, it is.

Q. Your company regularly keeps catalogs of its garments, does it not? A. Yes, they do.

Q. Are you familiar with the professional apparel catalog? A. Yes, I am.

Q. I show you a catalog marked Defendants' Exhibit 1 for identification, and ask you if you are familiar with that catalog? A. Yes, I am.

Q. Do you know when that catalog was published? A. In 1941.

Q. Do you have personal knowledge of such a catalog being used in this branch in 1941? A. Yes, I have.

Q. Do you keep that catalog currently in your catalog file? A. A copy of it, yes, for reference.

Q. And calling your attention to pages 4 and 5 of that catalog, does that illustrate the garments which you have referred to here, which were produced as Defendants' Exhibits 11 and 12 for identification? A. Yes, they are illustrated.

Q. Who published that catalog? A. This catalog was published in St. Louis.

Q. By what company? A. Mendel, I believe; Mendel Publishing.

Q. Is that the company that did the actual printing of it, or preparation of the material? A. Well, that I don't know.

Q. Who distributed that catalog to the public? A. Each branch distributes the catalog to their own customers.

Mr. Tjoflat: Object to the question and answer; she has qualified herself only as being employed at this branch; and I don't think she is competent to testify as to what other branches do.

Mr. Horton: Q. Were catalogs of that kind sent to you by the Angelica Jacket Company office in St. Louis?

The Witness: A. Yes, they were.

Q. Are you familiar with other branches of the company? A. Yes, personally.

Q. Have you been in some of them? A. Yes; I have been in the St. Louis.

Q. Do you know whether or not they keep such catalogs? A. They keep a copy of this now for reference.

Q. Do you have any knowledge as to where that particular catalog, Exhibit 1, came from? A. No.

Q. In order to keep up the stock of your company, you order goods from time to time from your St. Louis office, do you not?

Mr. Tjoflat: Object to the question, as leading.

The Witness: A. Yes.

Mr. Horton: It is leading, and it is leading up to another question.

Mr. Tjoflat: The question is leading.

Mr. Horton: Q. And what manner of record do you keep for ordering supplies or goods from your St. Louis office?

Mr. Tjoflat: Object to the question. She has not testified that she orders anything.

The Witness: A. We keep a copy of the requisition, which I am familiar with; because at that time I did the ordering for our Chicago office.

Mr. Horton: Q. You have ordered goods from St. Louis for your Chicago office? A. Yes, I do it all the time.

Q. I show you two documents marked Exhibits 13 and 14 for identification, and ask you, if you can, to state what

those are? A. They are a copy of requisitions from our office, that we sent to St. Louis; and then they, in turn, ship us the merchandise requested.

Q. Do you make anp copies of such orders at the time you order from St. Louis? A. Well, there are four copies of each requisition, and we keep one; three go down to our St. Louis office.

Q. And do you know whether Exhibits 13 and 14 are copies from your office files? A. This is a copy from our office files.

Q. And you are referring to Exhibit 14; how about Exhibit 13? A. Yes, both of them.

Q. Do either or both of those orders refer to a zipper jacket like Exhibit 11 or Exhibit 12? A. Well, 41TDS29 is the same as the one exhibit, and 325 is the other zipper smock.

Q. Is 325 the same as Exhibit 12? A. Except the color and the length of the sleeves.

Q. 325 is what color? A. Tan, tan color.

Q. And the shorter length sleeves? A. Elbow length sleeves.

Mr. Horton: You may examine.

CROSS EXAMINATION

By Mr. Slutz:

Q. You say that the invoices were brought here about ten days ago; where were those invoices brought from? A. Well, we have a room downstairs in our shipping department where we keep old files; they were brought from there?

Q. Did you go down and make an effort to find any invoices relating to these two style numbers? A. No, I did not.

Q. Someone else did that? A. Yes.

Q. Under your direction, did you ask someone to do it? A. No, I had nothing to do with that.

Q. So that you don't know of your own knowledge just how these invoices were brought up here, or by whom; is that right? A. I saw the people that were involved, but I didn't do the actual working on that; that was handled by Miss Levy.

Q. Do your style numbers from time to time change, on the same garment? A. No, they do not.

Q. What did you say was the style number of Exhibit 12? A. That is 41TDS29.

Q. Has that always been the number of that garment? A. Yes, it has.

Q. And that is presently the style number of the garment? A. Yes.

Q. I will show you Plaintiff's Exhibit for identification No. 1, and call your attention to a picture in the center of page 56, and ask you whether that purports to illustrate the same garment? A. The illustration C does, yes.

Q. Does that not have a different style number than the one you referred to? A. No.

Q. Isn't that TD, instead of TDS? A. Well, the S only stands for sanforized; and since all of our garments are sanforized material, we didn't feel the S was necessary; so the S was dropped.

Q. So you have changed your designation to that extent? A. Yes.

Q. You testified as to the date on which style number 377 was introduced, and when sales were first made; is that testimony from your own recollection and independent knowledge? A. Yes, it is; I handled our stock at that time, and also billed orders.

Q. Was that testimony based in part upon your study of your records, to refresh your recollection as to when those sales were made? A. I have never refreshed my recollection.

Q. You have not found any invoices in the year 1941 involving the sale of that particular style number, have you? A. Well, I didn't have anything to do with the checking up of them; I don't know if they found any, or not.

Q. You don't know of any invoices showing sales of that style? A. Not here, no.

Q. You do not have any presently available? A. No.

Q. When you testified regarding publication of your catalog by a printing firm in St. Louis, that is not a matter of your own knowledge, is it? A. Indirectly; at the time I knew it.

Q. Well, you knew it because someone told you; is that right? A. That's right.

Mr. Slutz: I move to strike the testimony in that regard, as having been hearsay; that is, the testimony regarding the publication of the catalog in St. Louis.

Mr. Horton: I oppose the motion. Certainly, information gathered and used by anyone as testified by Miss Wright is an exception to the hearsay rule.

Mr. Slutz: Q. What was your position with the company prior to the time Mr. Karger became the manager in Chicago? A. I took care of our stock in Chicago.

Q. Then you didn't make sales yourself, did you? A. In the store, yes, I made sales in our store too.

Q. Was that true from the beginning of your employment with the company? A. Yes, it is.

Q. But you had no part in the preparation or publication or distribution of catalogs yourself? A. Yes, I did, distribution.

Q. What did you do? A. I mailed them out to customers.

Q. On direction, when someone told you to mail them out? A. Regular letters from customers; yes.

Q. Do you know when model 377 was discontinued? A. About 1943. I don't know the exact date. It was in the line for about two years.

Q. But just when it began and when it ended, you don't know? A. Actual dates, no.

Q. Do you have any way in which you can fix the year 1941 as having been the year in which it was introduced? A. From the catalog.

Q. Oh, then your testimony was based on the catalog, rather than on your independent recollection? A. No; I handled the stock record at that time, and undoubtedly requisitioned the stock of 377 from St. Louis. But unless I actually saw a paper with my handwriting on it, I wouldn't want to testify to it.

Q. So you don't remember, just from your own experience, and your own recollection?

Mr. Horton: I object to that, as improper cross examination, and attempting to confess the witness. She has not so testified.

Mr. Slutz: Q. Am I right in that statement?

The Witness: A. I didn't understand what you said.

Q. When you say that the item was introduced in 1941, are you basing your opinion upon having seen a catalog? A. Oh, no; I know we carried a stock of it here at one time.

Q. But of your own recollection, without reference to a catalog, without reference to records, you don't know just when you carried the item, do you? A. Not actual date, no; it must have been in 1941.

Q. Because the catalog was dated that; is that what you mean? A. That is when the garment was introduced in our line.

Q. You say that is when the garment was introduced, because that is what the catalog indicates, that date; is that right? A. Well, that is how a garment is introduced in a line, through a catalog.

Q. So that when you say it was introduced in 1941,—what I am trying to get at is, when you say that the item was introduced into the line in 1941, you are basing that statement upon having examined a catalog which bears date 1941; is that correct? A. No, no; we get other information on new styles, besides catalogs and——

Q. But, now——

Mr. Horton: Let her finish her answer.

Mr. Slutz: Q. Go ahead, if you have anything more to say.

The Witness: A. And when a style is brought in the line there are lot more details involved than just the printing of the catalog. That would be the last thing that would be done.

Q. But from your own recollection, can you say, without reference to any catalog,—can you say whether that item was introduced in the line five years ago, or six years, or seven years ago? A. I would not have to refer to a catalog; I could refer to other types of records, such as billings of customers' orders, or copies of requisitions.

Q. But you would have to refer to some records? A. For an actual date, yes.

Q. For the exact year? A. Not the exact year; I know it was in 1941.

Q. How do you place it in that year? A. Well, I was handling the stock record at that time; and I know that the

garment was in the line about two years, and was discontinued in 1943.

Q. How many years were you handling the stock records? A. Five, almost six.

Q. How do you fix the year 1943, rather than 1944? A. That is when it was discontinued, in 1943; we didn't have any in 1944.

Q. How do you know it was 1943? A. I just happen to know that is when it was discontinued. We can tell you that about many of our styles, through remembering. I mean our styles are not so numerous, and they do not discontinue so many that you will forget certain types of garments.

Q. Is there anything that particularly connects it with 1943? A. Yes, definitely; we could not obtain zippers any more, and all of our zipper garments were taken out of the line.

Q. In 1943? A. That's right.

Q. And it is your best recollection that this particular garment had been made for approximately two years? A. That's right.

Q. Before it was discontinued? A. That's right.

Q. Was 41TDS29 discontinued at the same time? A. That was not discontinued; that was temporarily withdrawn, because they knew they were going to reinstate that number when we could obtain zippers again.

Q. For a period of time it was not manufactured and sold? A. That's right.

Q. How long a time? A. During the war. We were just able to obtain zippers, I would say in the last year and a half or two years; we reinstated zippered garments of all kinds.

Mr. Slutz: No further cross examination.

Mr. Horton: That is all.

AND FURTHER DEPONENT SAITH NOT

(Reading and signing of her deposition by the witness waived by agreement of all parties.)

Lillian Levy,

called as a witness on behalf of the Defendants, having been first duly sworn to testify the truth, the whole truth and nothing but the truth, in answer to oral interrogatories propounded, deposed and testified as follows:

DIRECT EXAMINATION

By Mr. Horton:

Q. Will you please state your full name? A. Lillian Levy.

Q. Where do you reside? A. At 3426 Monroe Street.

Q. Chicago? A. Chicago.

Q. What is your occupation? A. Office manager.

Q. Of what company? A. Angelica Jacket.

Q. Of the Chicago branch? A. Of the Chicago branch.

Q. How long have you been employed by Angelica Jacket Company? A. 17 years.

Q. How long have you been office manager? A. Eight years.

Q. As office manager, just generally, what are your duties? A. Supervisory, mainly.

Q. Do you have charge of preparing and keeping records of the company? A. In charge of keeping them, not preparing them.

Q. What kind of records do you keep, relative to your stock and your sales? A. Well, we keep a perpetual

inventory on our stock, and we keep a bookkeeping copy and a shipping copy on our shipments.

Q. And are those copies like invoices? A. Yes, they are copies of invoices.

Q. Are those invoices serially numbered? A. Yes.

Q. Do they bear the date of sale? A. They do.

Q. The name of the party to whom the garment is shipped? A. That's right.

Q. And do they identify the garment? A. Yes.

Q. How long back have you got such invoices for shipments made, of this branch? A. Well, I have records of the shipping copies back through 1942, and the bookkeeping copies, I don't have them that long.

Q. Do you have any period of time after which you destroy records? A. I do have; I don't know what the years are, offhand.

Q. Where do you keep copies of invoices which form a part of your office records? A. The current years are kept in the office; the old years are kept in the stock room.

Q. I show you a group of purported invoices, Defendants' Exhibits 2 to 10 inclusive, for identification, and ask you, if you can, to state what those are? A. These are shipping copies of orders.

Q. And do you know where they have been kept? A. These were kept in the transfer file of the stock room.

Q. And are those copies of orders shipped out by your branch office? A. Yes, these were shipped from the Chicago stock.

Q. Were those records prepared under your supervision? A. They were.

Q. And have they been kept in the regular course of business? A. Oh, yes.

Q. Are you familiar with the stock numbers of your various garments? A. I am.

Q. On those invoices there is reference to a stock number 377 in several places; can you state what garment that is? A. That is a white smock, with a diagonal zipper closing.

Q. Is it like either of the two smocks, Defendants' Exhibits 11 or 12? A. It is this one. (Indicating)

Q. You are referring to Exhibit 11 for identification, are you not? A. That's right.

Q. Do you know of your own knowledge when the garment number 377 was first sold in your Chicago branch? A. I believe it was 1941.

Q. Do you know whether it is now sold? A. It is not.

Q. What happened with respect to that garment? A. It was discontinued, because zippers were unobtainable during the war; and it was dropped from our line.

Q. Do you know whether there was any change at any time in the form or style of the model number 377? A. There was not.

Q. Were all the 377s sold by your company identically similar to Defendants' Exhibit 11? A. To my knowledge, they were.

Q. Now, on those invoices there is reference also to 41TDS28 smock; can you tell us what that is? A. That is a zipper smock, with a high collar.

Q. And I show you Defendants' Exhibit 12 for identification, and ask you whether that is the smock of that style? A. No; that one is 41TDS29. That is the long sleeve.

Q. What is TDS28? A. It is the same model with the short sleeve.

Q. Do you know whether or not at the present time you have any different style number for that smock? A. I do not.

Q. Did you ever use a number without the S on it? A. Oh, yes.

Q. What does the S mean? A. It means the garment is made of sanforized material.

Q. Do you know whether you still use the TDS indication? A. We do use it; it is the same style now, because they are all being made of sanforized material.

Q. Would 41TD28 be the same garment as 41TDS28?

Mr. Slutz: Objection to the leading form of the question.

The Witness: A. It would be.

Mr. Horton: Q. Do you know when your company started to manufacture and sell a smock identical with Defendants' Exhibit 12? A. I think it was 1941.

Q. Upon what do you base that recollection? A. Well, I believe this catalog is the first one which was illustrated.

Q. You are referring to Defendants' Exhibit 1 for identification? A. That's right. I can check our records to see the year it was put into our line.

Q. You have sales records, do you not? A. Yes, we have.

Q. Are those records which you have, Exhibits 2 to 10 for identification, records of such sales? A. That's right.

Q. Now, you also keep a stock record, do you not? A. Yes.

Q. And then you keep also a stock order record; or is that the same record; how do you obtain your goods from the St. Louis branch? A. We order them through requisitions from our St. Louis.

Q. And how many copies do you make, of such requisitions? A. We make four copies.

Q. What happens to those copies? A. Three copies are mailed to the home office; one copy comes back to us after it has been shipped; one copy we keep.

Q. Do you keep a copy of such orders in your files, in the regular course of business? A. Yes, we do.

Q. I show you two documents marked Defendants' Exhibits 13 and 14 for identification; and ask you, if you can, to state what those are? A. These are our requisitions ordering goods from St. Louis.

Q. Do those exhibits show orders of smocks, Exhibits 11 or 12? A. Yes, it does.

Q. And to what numbers do you refer, on those order blanks? A. 4271, 41TDS29; and 4191, 325—similar smocks.

Q. You say that 325 is a similar smock; do you know what differences there are between that and the other ones? A. It is the same as 41TDS28, except it is made of tan.

Q. It is constructed in the same way? A. Yes, it is.

Q. Now can you state where these Exhibits 2 to 10 for identification and 13 and 14 for identification were obtained? A. They were taken from our transfer file in the stock room.

Q. And were they taken from that under your supervision? A. They were.

Q. And for the purposes of this deposition? A. That's right.

Q. And those documents are regular parts of your records, are they not? A. They are.

Q. I call your attention to the catalog Defendants' Exhibit 1 for identification, and ask you, if you can, to state what that is? A. It is a catalog illustrating our professional garments.

Q. Is that a catalog issued by your company? A. Yes.

Q. Do you know when that catalog was received in this office? A. I think it was 1941; but I would have to check.

Q. Well, upon what do you base that belief? A. Well, I just seem to recall that there was an earlier price list than this; and this is the March 10, 1942. I don't know for sure whether it was 1941, but I can check that.

Q. Do you have an independent recollection of having seen a catalogue similar or identical to Exhibit 1 in this office in 1941, 1942, or 1943? A. Yes.

Q. What is the earliest date that you could say, of your own knowledge, you saw this catalog in your office? A. Offhand, about 1941.

Q. Is that catalog kept in your regular files? A. Yes, it is.

Q. Do you know where that particular catalog came from? A. I do not.

Q. When you say that the catalog is kept in your files, you do keep one identical therewith? A. A copy; that's right.

Q. Is that used by you currently? A. For reference, occasionally.

Mr. Horton: I believe that is all.

CROSS EXAMINATION

By Mr. Slutz:

Q. Miss Levy, you fix in your own mind the date when style 377 was introduced by referring to the catalog; is that right? A. Well, yes.

Q. Your independent recollection would not fix the exact year in which—I mean independently of the catalog, would it? A. No.

Q. You didn't find any invoices dated in 1941, did you? A. I didn't look for any.

Q. You didn't get these invoices out yourself? A. It was under my supervision.

Q. But you didn't look for any of them yourself? A. No.

Q. So you don't know whether there are any invoices dated 1941, or not? A. No.

Q. Defendants' Exhibit for identification No. 8 is not the invoice for the sale of any garment, is it? A. It covers a shipment of smocks that were returned to us for repair.

Q. That invoice does not show any sale of a smock, does it? A. No, it does not.

Q. It doesn't show any date on which a smock was sold, does it? A. No.

Q. Again, your recollection as to when this particular catalog, Exhibit 1, was received is based on the date that you find in that catalog, is it? A. I didn't get your question.

Q. I say, your recollection of the date when catalogs such as Exhibit 1 were received is based on the date that you see in the catalog, isn't it? A. Yes.

Q. Of your own knowledge, you can't be sure whether it was received in 1941 or early in 1942? A. The catalog?

Q. Yes. A. Offhand, I can't know, without referring to my records.

Q. And you have not referred to any records as yet? A. No, I have not.

Q. To fix that date in your mind? A. I have not.

Mr. Slutz: No further cross examination.

REDIRECT EXAMINATION

By Mr. Horton:

Q. Miss Levy, do you have any recollection as to this catalog, Exhibit 1 for identification, independent of the date of the catalog for any of the time prior to the month of December, 1943? A. I don't quite know how to answer that.

Q. Well, do you have any recollection of having seen that catalog in your office? A. Oh, yes.

Q. Prior to December, 1943? A. Oh, surely.

Q. Now, is that recollection entirely dependent upon the date of the catalog? A. No.

Q. Is it a recollection which is not dependent on that date? A. That's right.

Q. Now, you do have such records from which you know when such garments have been sold, do you not? A. Yes, we have.

Q. These exhibits 2 to 10, inclusive, for identification, which you examined, show sales of these zippered garments, Exhibits 11 and 12, in the years that are shown on those invoices, do they not? A. That's right.

Mr. Slutz: Object to that question and answer, on the ground that the documents speak for themselves.

Mr. Horton: Q. You said something about having some records which you might refer to, which shows when you got this catalog; do you have such a record? A. I would have to check through my papers; I am quite sure I have.

Q. Would it be a long job to do so? A. I think so; that is one of the old records, that is transferred.

Q. Your attention was called to one specific invoice here, Exhibit 8 for identification; and you stated that that did not show a sale of a garment; is that true? A. That is right.

Q. And that does show a repair or return of a garment? A. That is correct; we replaced the zipper, and then reshipped it to the customer.

Q. Do you know whether your company made repairs of garments other than garments of its own manufacture? A. We do not.

Q. What is the style number listed for the garment which was repaired and shown in that exhibit?

Mr. Slutz: Objection, on the ground the document speaks for itself.

The Witness: A. 41TDS28.

Mr. Horton: Q. And that is the same zippered smock which you have referred to before?

A. It is.

Q. Was that garment manufactured by your company prior to the date of that invoice? A. Yes.

Q. Each one there was one of your smocks returned to you?

Mr. Slutz: Objection, on the ground it is leading; also the document speaks for itself.

The Witness: A. Two smocks were returned to have the zippers replaced.

Mr. Horton: Q. And were those smocks which had already been sold to customers? A. They were sold previously.

Q. Now, do these other invoices that you have looked at show sales of such garments?

Mr. Slutz: Objection, again, on the ground that the documents speak for themselves.

Mr. Horton: You have asked her a lot of questions to try to cast some doubt on here.

Mr. Slutz: Counsel persists in violating the rules of practice.

Mr. Horton: If you have questions, I think possibly somebody else might not understand them; so if we can explain them for your benefit, and the Court's, we are certainly glad to do so.

Q. Do some of those other invoices show sales of such garments? A. Yes, sir.

Mr. Slutz: Objection to the question, as also calling for a conclusion. Move that the answer be stricken.

Mr. Horton: Q. Calling your attention, for example, to Exhibit 13, what does that invoice indicate?

Mr. Slutz: Objection, on the same grounds.

Mr. Horton: Oh, you don't need to repeat.

Mr. Slutz: If you are willing to stipulate we can have a continuing objection,——

Mr. Horton: You can have such continuing objection.

The Witness. A. It covers the shipment of three smocks to a customer.

Mr. Horton: Q. And does that give the price of the smocks? A. Yes, it does.

Q. Does it show whether or not they were paid for? A. Yes, it does.

Q. Does it state the name of the person to whom they were shipped? A. That's right.

Q. Does it state the date of shipment? A. Yes, it does.

Mr. Horton: That is all.

Mr. Slutz: No recross examination.

Mr. Horton: Thank you.

AND FURTHER DEPONENT SAITH NOT

Mr. Horton: Are you willing to waive the signatures of the witnesses Annebelle Wright and Lillian Levy?

Mr. Slutz: We are willing to waive signatures.

Mr. Tjoflat: Yes.

Mr. Horton: Reading and signature of the three witnesses is waived by stipulation of counsel.

It is further stipulated and agreed by and between counsel for the parties hereto that photostats may be substituted for Defendants' Exhibits 2 to 10 inclusive, for identification, and Defendants' Exhibits 13 and 14 for identification; and that the original documents may then be returned to Angelica Jacket Company.

Mr. Slutz: The stipulation is agreeable.

Mr. Horton: It is stipulated and agreed that the two exhibits 11 and 12 for identification may be retained by

counsel for the defendants, subject to production upon request by plaintiff, and produced at the time of trial.

Mr. Slutz: That is all right.

Mr. Tjoflat: All right.

NOTICE OF TAKING DEPOSITIONS

To:
Bugelter & Zugelter,
1710 First National Bank Building,
Cincinnati, Ohio.

Nichols, Wood, Marx & Ginter,
900 Traction Building,
Cincinnati, Ohio.
Attorneys for Plaintiffs.

PLEASE TAKE NOTICE that on December 7, 1948, at ten o'clock A. M., before Peter V. Kuhn, a Notary Public, at the office of Angelica Jacket Co., 177 North Michigan Avenue, Chicago, Illinois, and continuing thereafter from day to day until completed, the defendant will take the testimony of Mr. Louis Karger, Miss Lillian Levy, Miss Annebelle Wright, and possibly others, for such use in the above entitled cause as may be authorized by the Federal Rules of Civil Procedure.

You are invited to attend.

(signed) Hinkle, Horton, Ahlberg, Hansmann & Wupper

(signed) Wood, Arey, Herron & Evans
Attorneys for Defendant.

Received a copy of the foregoing notice this 26th day of November, 1948.

(signed) Leonard D. Slutz

(signed) Frank Zugelter
Attorneys for Plaintiffs.

Notice of Taking Depositions

DEPOSITIONS OF DAVID B. KNAPP, MAX J. LOVELL and WILLIAM MacMULLEN, witnesses of lawful age, taken on behalf of the defendants in the above entitled causes wherein Cavu Clothes, Inc., and Montie M. Brohard, Jr., are the plaintiffs and Squires, Inc., United Shirt Distributors, Inc., and The Richman Brothers Company are the defendants, pending in the District Court of the United States for the Southern District of Ohio, Western Division; and for the Eastern District of Michigan, Southern Division, pursuant to the notices hereto annexed, before Max Lipstein, a notary public in and for the State of New York, County of New York, at the office of Fox-Knapp Manufacturing Company, 230 Fifth Avenue, New York, New York, on the 16th day of December, 1948.

APPEARANCES:

(No appearances for the plaintiffs.)

Messrs. Cushman, Darby & Cushman,
Attorneys for Defendant United Shirt Distributors, Inc., in Civil Action No. 7267, and The Richman Brothers Company, in Civil Action No. 7304
730 Fifteenth Street, N.W., Washington 5, D. C.
By: John J. Darby, Esq., of Counsel.

Messrs. Hinkle, Horton, Ahlberg, Hansman & Wupper,
Attorneys for Defendant Squires, Inc., in Civil Action No. 1847
2300 Board of Trade Building, Chicago, Illinois.
By: Warren C. Horton, Esq., of Counsel.

STIPULATION

IT IS HEREBY STIPULATED by and between the parties hereto through their respective counsel that the within deposition need not be signed.

David B. Knapp,

a witness named in the annexed notice, being of lawful age, and being first duly sworn in the above causes, testified on his oath as follows:

DIRECT EXAMINATION

By Mr. Horton:

Q. What is you full name, Mr. Knapp? A. David B. Knapp.

Q. What is your occupation? A. I am President of Fox-Knapp Manufacturing Company.

Q. How long have you been associated with that company? A. 23 years, since its inception.

Q. Are you familiar with the promotions made by your company of a ski jacket known as the Birger Ruüd jacket? A. Yes, I am.

Q. When did that take place? A. We manufactured those jackets in the Birger Ruüd line during the extreme latter part of 1937 through 1938 and 1939.

Q. Can you state who Birger Ruüd was? A. Birger Ruüd is and was a Norwegian, a two-time Olympic champion, ski champion, and he came to this country and through the offices of a promoter designed ski clothing.

We, again through that promoter, became a part in that manufacturing of the ski jacket under the Birger Ruüd promotion.

Q. I show you a jacket which bears the Birger Ruüd label, and ask if you can state who manufactured that garment (handing to witness)? A. Yes, my company manufactured this garment; the Fox-Knapp Manufacturing Company.

Q. When was that garment manufactured by your company? A. Oh, I imagine this was made in 19—in the

latter part of 1937 or during 1938. Certainly not later than 1939.

Q. Did your company sell garments identical with that one you are looking at? A. Yes, this was one of our regular numbers.

(Discussion off the record, during which the witness handed a folder to Mr. Horton.)

Q. You handed me a folder marked "Birger Ruüd Ski Wear." Can you state what that folder is (handing to witness)? A. This is illustrated with the Birger Ruüd numbers that we manufactured during the period that I mentioned before.

Q. Was that folder prepared by or for your company? A. This folder was prepared for us by Alfred Silberstein during that same period. He was our advertising counsel and advertising company, who helped us promote Birger Ruüd.

Q. Can you state the years in which this folder was prepared? A. I couldn't tell you the exact year, but it was either during 1938 or 1939.

Q. When would be the latest year? A. 1939 would definitely be the latest year.

Q. In this folder is the jacket which you have before you illustrated? A. Yes, the jacket is illustrated.

Q. That is the illustration at the left hand side of the page, is it not? A. That's correct.

Q. On that folder there appears below the jacket something that apparently is a label? A. That's right. That is the reproduction of our Birger Ruüd label. It reads "Approved, Birger Ruüd," which supports the statement I made before that Mr. Ruüd designed these garments and we were not permitted to market them until he approved each garment that he designed in its final manufactured state. They had to meet his requirements.

Then we were permitted to use his approved label.

Q. Does the garment that you have before you bear that label? A. It has the same label.

Mr. Horton: I will have the jacket marked for identification as Defendant's Exhibit 1 of this deposition and the folder referred to by Mr. Knapp marked as Defendant's Exhibit 2 of this deposition.

(Jacket referred to, identified by the witness, was marked Defendant's Exhibit 1 for identification of this deposition, of this date.)

(Folder referred to, entitled "Birger Ruud Ski Wear," identified by the witness, was marked Defendant's Exhibit 2 for identification of this deposition, of this date.)

By Mr. Horton:

Q. Mr. Knapp, does your company keep its records of sales for 1938; back as far as that? A. No, we don't. We keep our records—well, for about six or seven years. We don't keep our records back any further. We just have a physical room to store them.

Q. Can you state in close figures the volume of business which your company did in jackets like Exhibit 1? A. To the best of my recollection we manufactured approximately 1,000 or 1,200 dozen of these during that period.

Q. How widely were those distributed in stores in the United States? A. They were distributed throughout the entire country. Shall I give you some of the names of the people that I recall?

Q. The stores that handled it. A. In New York there was R. H. Macy and Company. In Newark, there was Bamburger. In Chicago there was Marshall Field and Company. In Minneapolis, Dayton Company. In Denver, there was the May Company.

In Seattle, there was Frederick and Nelson. In San Francisco there was the Emporium. In Los Angeles there was Bullocks.

Does that give ou a pretty wide distribution?

Q. Yes. Was this garment advertised nationally during that period? A. We advertised it through the field—through all the papers in many of the important papers in our own field, trade papers, and I know that our customers advertised it in their local papers.

Q. Mr. Knapp, referring to Exhibit 2 which you have produced here, how long has that been in your possession? A. Since the little booklet was printed, which was back in 1938 or 1939.

Mr. Horton: I have no further questions for you. Thank you, Mr. Knapp.

(Whereupon, at 11:15 o'clock A.M., the deposition of David B. Knapp was closed.)

Max J. Lovell,

being of lawful age, and being first duly sworn in the above causes, testified on his oath as follows:

DIRECT EXAMINATION

By Mr. Horton:

Q. What is your address, Mr. Lovell? A. Number 276 Fifth Avenue, New York City.

Q. You are a lawyer by occupation, are you not? A. I am.

Q. Of what bars are you a member? A. New York State Bar; United States District Courts.

Q. The United States District Courts in and around New York? A. In and around New York, Southern District, Eastern District.

Q. Of New York? A. Of New York, yes.

Q. Mr. Lovell, there has been produced here a garment which is marked Exhibit 1 for identification. Are you familiar with that particular garment (handing Defendant's Exhibit 1 for identification to witness)? A. I am.

Q. Do you know where it came from? A. Yes. That garment was in my possession and I have had it since the year 1938.

Q. Where did you obtain it? A. I bought it from the Fox-Knapp Manufacturing Company.

Q. Has that been in your possession ever since 1938? A. It has, until the time I turned it over to the counsel for the defendant, Mr. Darby.

Q. How long ago was that? A. About four months ago—four or five months ago.

Q. On the inside center seam of this garment there is some writing. Can you state who put that writing on there? A. Yes, that is my signature which I put on the garment when I turned it over to Mr. Darby.

Q. Is that the identification by which you know that that is the same garment? A. Exactly.

Mr. Horton: That is all. Thank you, Mr. Lovell.

(Whereupon at 11:20 o'clock A.M., the deposition of Max J. Lovell was closed.)

William MacMullen,

being of lawful age, and being first duly sworn in the above causes, testified on his oath as follows:

DIRECT EXAMINATION

By Mr. Horton:

Q. You have given the reporter your full name, Mr. MacMullen? A. I have.

Q. What is your address? A. Number 3, Ash Lane, Green Acres, Valley Stream, Long Island.

Q. What is your occupation? A. Salesman.

Q. Of the Fox-Knapp Manufacturing Company? A. Yes.

Q. How long have you been employed by that firm? A. I think it was in July, 1937——

Q. ——that you started to work for the company? A. Yes.

Q. In what capacity did you then work for the company?

A. I was in at that time, I wasn't selling goods. I was doing styling and looking up piece goods for various garments to put in our line.

I assisted Mr. Knapp in selections of piece goods.

Q. I show you a garment which is marked here as Exhibit 1 for identification and ask you, if you can, to state what that garment is (handing Defendant's Exhibit 1 for identification to witness)? A. That is what we called our ski jacket.

Q. Did you have a particular name for that jacket? A. We did. It was called our "Mount Baker" under our model number—make number BR-9.

Q. Can you state of your own knowledge when such garments were made by your company A. As far as I can recollect they were made during the fall of 1937-1938.

Q. Can you state in what quantities those were manufactured by your company? A. That, I couldn't tell. We made quite a number of them, quite a lot of them, but I couldn't state the quantity, number of dozens that were made.

Q. Can you state whether any of these jackets were made by your company after 1943? A. I can't recollect that. I don't remember making any in 1943 or after '43.

Q. I call your attention to the bulletin which is marked here as Exhibit 2 for identification, and ask you if you are familiar with that bulletin (handing Defendant's Exhibit 2 for identification to witness)? A. Yes. This is our brochure that we used for showing or cataloguing and showing the garments.

Q. Did you have a name for this line of garments? A. Yes. It was called the Birger Ruüd Ski Wear line.

Q. Do you know who Birger Ruüd was? A. Yes. He was a famous international ski jumper, and when we decided to go into this here (indicating Defendant's Exhibit 1 for identification), we had him come here and he helped style the garments for ski wear personally, himself.

Q. When you said, referring to "this here" you were pointing to the garment, Exhibit 1, were you not? A. Yes. Well, Exhibit 1, which is part of it, and other models as well. He helped design a number of these garments.

Q. Are some of those other models illustrated in the folder, Exhibit 2 (indicating)? A. Yes.

Q. Do you remember when Mr. Ruüd was here in connection with that promotion? A. It must have been prior to 1937 because we got the line out in 1937, and we had to do considerable detail work prior to getting it ready for 1937.

I can't give the exact date that he was here.

Q. Mr. MacMullen, have you produced some papers here from our files? A. Yes. We got up what we call our price list, and it was furnished to all our salesmen covering the make numbers, colors, and sizes and other details with prices at which to sell their merchandise.

Q. Did you have such price lists for the Birger Ruüd line of garments? A. Yes. This applied exclusively to the Birger Ruüd line of ski wear.

Q. You have produced there five typewritten sheets, have you not (indicating)? A. Five sheets—some were made out in 1937 and some were made out in 1938, of these five sheets.

Q. Where have those five sheets been since they were made? A. They have been in my possession ever since they were issued.

Q. When did you get them out of your file? A. Today.

Q. Do those sheets bear dates? A. Of course, I have a pencil mark number on that (indicating); would that be permissable?

Q. Is that your marking? A. That is my own writing, and they all bear dates.

Q. How do those dates agree with the dates when those items were made up? A. How do these dates agree?

Q. Yes. What do those dates on those sheets mean? A. These dates on these sheets indicate that the goods are now ready for sale according to these prices marked on the sheets.

Q. And as of the date appearing thereon? A. As of the date appearing thereon, correct.

Q. On these sheets there are some longhand notes and writing. Do you know whose handwriting that is? A. That is my own, for my own personal information.

Mr. Horton: I will have the five sheets marked for identification as Defendant's Exhibits 3-A, 3-B, 3-C, 3-D and 3-E, of this date.

(Five sheets referred to, identified by the witness, were marked Defendant's Exhibit 3-A to 3-E inclusive, for identification of this deposition, of this date.)

By Mr. Horton:

Q. I show you a folder and ask you, if you can, to state what that is (handing to witness)? A. This folder is a price list with materials attached showing the qualities and colors of the garments listed.

Q. Do you know where that folder came from? A. Yes, that has been in my possession ever since we introduced the line.

Q. When did you produce it, today? A. Today, I produced it today, yes.

Q. When you say that was a price list of your line, is it any particular line of your goods? A. Yes, the Birger Ruud line of ski wear.

Q. Is a price list for jackets like Exhibit 1 (indicating) shown in that folder? A. Yes.

Q. To what do you refer? A. To "Mount Baker," make number BR-9.

Mr. Horton: I will ask that that folder be marked for identification as Defendant's Exhibit 4 of this date.

(Folder referred to, identified by the witness, was marked Defendant's Exhibit 4, for identification of this deposition of this date.)

By Mr. Horton:

Q. Mr. MacMullen, did your company advertise and have publicity articles in magazines or newspapers relative to this line of garments? A. Yes. In the issue of the Daily News of June 13, 1938, which shows the ski lodge similar to a log cabin that we had set up in our office to display our Birger Ruüd ski line and wear.

Q. Is there a jacket illustrated in that picture? A. Yes.

Q. Can you state what model jacket that is? A. I don't want to get confused here. You see on the shoulder

here (indicating), I know we made some of them with a leather piece on there for when they put their skis over the shoulder. This doesn't have it (indicating Defendant's Exhibit 1 for identification). I am just trying to recollect now.

Yes, that is the one.

Q. Is that the "Mount Baker" model? A. That is the "Mount Baker" model. That is just showing the yoke there; that is the "Mount Baker" model, our make number BR-9.

Q. This Daily News Record clipping to which you referred, can you state where that has been? A. Well, we kept that set up in our office for sometime after we discontinued the sale, and then we eventually took it down, tore it out.

Q. Has it been kept in your files, the files of your company? A. This paper (indicating)?

Q. Yes. A. Yes.

Q. Was that a publication as of the date it bears? A. Yes.

Mr. Horton: I will ask that that be marked for identification as Defendant's Exhibit 5 of this date.

> (Page 4 of Daily News Record, dated Monday, June 13, 1938, identified by the witness, was marked Defendant's Exhibit 5 for identification of this deposition of this date.)

By Mr. Horton:

Q. I show you a card bearing some clippings pasted on it and ask you, if you can, to state what that is (handing to witness)? A. Those are some clippings that were cut out from the "Boys' Outfitter," that we showed our display; it showed our ski lodge display of the Birger Ruüd jackets.

Q. What was the date of that publication? A. July, 1938.

Q. Do you know where those clippings have come from? A. These clippings came from a book that we kept for a reference to models of garments we made in the past.

We accumulate these and retain them just to show garments that were made in the past.

Q. Is that a file record of your company? A. This is, yes (indicating large file).

(Page of clippings referred to identified by the witness was marked Defendant's Exhibit 6 for identification of this deposition of this date.)

Mr. Horten: That is all. Thank you, Mr. MacMullen.

(Whereupon, the witness was excused.)

DEPOSITIONS of OSBORNE J. EYERLY and CHARLES KAPLAN, witnesses of lawful age, taken on behalf of the defendants in the above entitled causes wherein Cavu Clothes, Inc., and Montie M. Brohard, Jr., are the plaintiffs and Squires, Inc., United Shirt Distributors, Inc., and The Richman Brothers Company are the defendants, pending in the District Court of the United States for the Southern District of Ohio, Western Division; and, for the Eastern District of Michigan, Southern Division, pursuant to the notices hereto annexed, before Max Lipstein, a notary public in and for the State of New York, County of New York, at the offices of The Shirtcraft Company, Inc., 350 Fifth Avenue, 12th Floor, Room 1230, New York, New York, at 12:30 o'clock P.M., on the 16th day of December, 1948.

APPEARANCES:

MESSRS. ZUGELTER & ZUGELTER,
Attorneys for Plaintiff
1710 First National Bank Building, Cincinnati, Ohio.
By: GERALD B. TJOFLAT, ESQ., of Counsel.

MESSRS. CUSHMAN, DARBY & CUSHMAN,
Attorneys for Defendant UNITED SHIRT DISTRIBUTORS, INC., in Civil Action No. 7267, and THE RICHMAN BROTHERS COMPANY, in Civil Action No. 7304,
730 Fifteenth Street, N.W., Washington 5, D. C.
By: JOHN J. DARBY, ESQ., of Counsel.

MESSRS. HINKLE, HORTON, AHLBERG, HANSMAN & WUPPER,
Attorneys for Defendant SQUIRES, INC., in Civil Action No. 1847,
2300 Board of Trade Building, Chicago, Illinois.
By: WARREN C. HORTON, ESQ., of Counsel.

STIPULATION

IT IS HEREBY STIPULATED by and between the parties hereto through their respective counsel that the within deposition need not be signed.

Mr. Horton: Pursuant to the notices heretofore presented, this deposition has been adjourned to the offices of The Shirtcraft Company, Inc., 350 Fifth Avenue, 12th Floor, Room 1230.

At this time Mr. Tjoflat has appeared and is present, and after discussion between counsel it is stipulated that Exhibit 1 previously identified today need not be sent to the Clerk of the Court, but can be given to plaintiff's counsel who will produce it at any court or for the purpose of any counsel at any time upon request.

It is further stipulated that the depositions taken today as well as the depositions taken in Chicago may be used in all three cases.

Osborne J. Eyerly,

a witness named in the annexed notice, being of lawful age, and being first duly sworn in the above causes, testified on his oath as follows:

DIRECT EXAMINATION

By Mr. Horton:

Q. What is your full name, Mr. Eyerly? A. Osborne J. Eyerly.

Q. Where do you reside? A. 52 Gramercy Park, New York City.

Q. What is your occupation? A. President, Empire State Craftsmen.

Q. What is the business of that company? A. Typography and printing.

Q. Has your company been employed to do catalogue printing work for the Shirtcraft Company, Incorporated? A. Yes.

Q. Mr. Eyerly, you have handed to me a folder illustrating a number of garments and bearing the name of the Shirtcraft Company, Incorporated. Where did that folder come from (handing to witness)? A. The layout was given to me for production by Mr. Kaplan about the 1st of May, 1941.

We proceeded to print a quantity of these folders. They were completed——

Mr. Tjoflat: I object to the answer as not being responsive. The question was "where did that folder come from?"

The Witness: I answered that.

By. Mr. Horton:

Q. You just go ahead. A. (Continuing) The printing was completed sometime on or about the 15th of May, 1941, and from my record it was billed May 21st, for the sum of $306.

Q. On that particular folder which you have in your hand, do you know where that came from today? A. I took this from my files, from my sample files.

Q. You brought it to this office today? A. I did, yes sir.

Q. Where has that folder been since it was originally printed? A. It has been in my sample files.

Mr. Horton: I will ask that that folder be marked Defendant's Exhibit 7 for identification of this date.

(Folder referred to, identified by the witness, was marked Defendant's Exhibit 7 for identification of this date.)

By Mr. Horton:

Q. I hand you another group of printed sheets and ask you, if you can, to state what that is (handing to witness)? A. This work was started around April 20th of 1941. It consists of 12 sheets, 9 by 12. The work was given to me by Mr. Henry Kaplan in layout form.

We started production in the early part of May and completed the work somewhere around the 20th of May.

My records show that we billed for this job on the 26th of May in the sum of $624. We also have, I think, some samples of this work in our files. I know we have samples of this work here (indicating Defendant's Exhibit 7 for identification).

Q. You are referring to Defendant's Exhibit 7? A. Definitely, yes. I probably could produce another four or five copies by searching through the files.

You know, printers keep very strange filing systems. We just have sample bins and all it requires is going through those bins to dig out some more samples.

Q. Where did you get this second printed sheet? A. This was given to me. We had it—it was sent down to me by Mr. Henry Kaplan. He wanted the information as to when we started the work and I went through my ledgers to determine—that is the dates I gave you was taken from my ledgers.

Q. Referring to this last catalogue, do you have a recollection of that having been done by your company? A. Definitely; I came down here, took it down and sort of supervised this production.

Q. What have you done to fix the date of the work upon these two catalogues? A. I went back to this particular job. I knew they both came in within a very short time, like two or three weeks of one another.

Q. You are referring there, when you said "this particular job," you are referring to Defendant's Exhibit 7? A. Yes, because I could trace that with greater ease than I could this (indicating).

Q. Referring to the second catalogue? A. Yes, because they were both started within two weeks of one another.

Q. Did you check any records to see what year that was? A. Yes, indeed. I checked my ledger.

Mr. Horton: I will ask that the second catalogue be marked for identification as Defendant's Exhibit 8 of this date.

(Second catalogue referred to, identified by the witness, was marked Defendant's Exhibit 8 for identification of this date.)

Mr. Horton: You may examine.

CROSS EXAMINATION

By Mr. Tjoflat:

Mr. Tjoflat: Let the record show that in the examination of the witness, counsel for Cavu Clothes and Mr. Brohard, plaintiffs, was not shown the exhibit, and having examined it after the examination of the witness I want to place an objection on the record to it unless the defendant's indicate what parts, if any, of either or both of the Defendant's Exhibits 7 and 8, which have been identified as such.

(Discussion off the record.)

Mr. Tjoflat: My objection to these exhibits is that they show many jackets. Defendant's Exhibit 8 for identification has 12 or so pages, no particular one of them is indicated as being relied upon in defense of these actions.

By. Mr. Tjoflat:

Q. Defendant's Exhibit 7 for identification, you say that——

Mr. Horton: Just a minute there, have you completed your objection?

Mr. Tjoflat: That's right.

Mr. Horton: Let the record show that at no time during the examination of the witness on direct did you request that the catalogues be handed to you.

You were standing within two or three feet of them and they were resting on the table, and you had full opportunity to make any examination which you wished.

Mr. Tjoflat: Let the record also show that examination of the witness concerning the Defendant's Exhibit 7 and 8 for identification were used in interrogation of the witness before they were identified as exhibits, and all during the interrogation they were in the hands of counsel.

By Mr. Tjoflat:

Q. As to Defendant's Exhibit 7 for identification, Mr. Eyerly, what did you have to do with the printing of that exhibit (handing Defendant's Exhibit 7 for identification)? A. We did the entire work, completely.

Q. What do you mean by that? A. We were given a layout, we were given art work, and from that point on we did the complete preparation such as making offset plates, setting typography, making reproduction proofs, preparation for offset printing, running and binding.

Q. Is there any identification of this Exhibit 7 for identification that would tie that exhibit in with any of your records, other than your memory? A. Not my memory at all—you mean is there a guide line on here?

Q. Is there anything on that exhibit—— A. There are no guide lines printed in this type of work.

Q. So that there is nothing on that exhibit which identifies your book entries so that you can say positively that that exhibit was printed at a particular date? A. Well, I have records back in my plant that can prove that.

Q. My question was: is there anything on that exhibit, any identification, code number, or what have you, that will tie in with your records of production and billing? A. Yes, it would say in my records, "Airman Sportswear For Goods Sports in Any Weather."

We generally take the title, the principle title of the work and use that as an identification for the work to get this through the shop.

Q. Did you ever print any more of these on the subsequent date? A. Reprints, no, I don't think we did.

Q. But there is nothing, no identification other than this phrase you have mentioned? A. That is all I go by.

Q. As to Defendant's Exhibit 8 for identification, I believe you testified you had no records as to this one? A. That's right.

Q. That you fixed the date by memory? A. I fixed it a good bit by memory, yes, because both jobs went through, as I say, within two weeks.

Q. That is the only record you would have, then, would be your memory? A. Yes, and the price association in the ledger for an amount that would logically identify it, as far as I am concerned, as the job that was done.

Q. As of now, on the basis of what you have before you, all you have is memory to tie the two in? A. No, that is not memory a bit; I have records on that.

Q. But you do not have it here? A. No, I didn't bring them here.

Mr. Tjoflat: That is all.

REDIRECT EXAMINATION

By Mr. Horton:

Q. Would you be willing to let plaintiff's counsel examine these records in your office if he wanted to do so? A. Certainly.

Q. Do you have an independent recollection of the work which your company did on Exhibits 7 and 8 for identification? A. Will you say that again, please?

Q. Do you have a personal independent recollection of the work which was done by your company in preparation of Exhibit 7 and Exhibit 8 for identification? A. Well, I have my memory to the extent that I handled this with Mr. Kaplan himself, Mr. Henry Kaplan.

I had to visit this office probably three or four times on this particular work while it was in progress, bringing up such things as proof for his okay, types for his okay, and that is my memory. I am quite certain I did it.

Mr. Horton: That is all.

Mr. Tjoflat: I have nothing more.

Mr. Horton: Let it be stipulated that signature and reading of the deposition by the witness is waived by the witness and by counsel for the parties, but that a copy of the deposition is being delivered to the witness, Mr. Eyerly.

(Whereupon, at 12:55 o'clock P.M., the witness, Osborne J. Eyerly, was excused.)

Charles Kaplan,

a witness named in the annexed notice, being of lawful age, and being first duly sworn in the above causes, testified on his oath as follows:

DIRECT EXAMINATION

By Mr. Horton:

Q. What is your full name, please? A. Charles Kaplan.

Q. Where do ou reside? A. I reside in Hewlett, Long Island, New York.

Q. What is your occupation, Mr. Kaplan? A. I am Vice President and Sales Manager of Shirtcraft Company, Incorporated.

Q. How long have you been employed by that company? A. Since 1921.

Mr. Horton: Will you mark this jacket as Defendant's Exhibit 9 for identification of this date?

(Jacket referred to was marked Defendant's Exhibit 9 for identification of this date.)

Mr. Horton: Would you like to look at this Exhibit before I show it to the witness?

Mr. Tjoflat: Certainly, thank you (receiving Defendant's Exhibit 9 for identification from Mr. Horton.)

By Mr. Horton:

Q. Mr. Kaplan, I show you this garment which we have marked Defendant's Exhibit 9 for identification, and ask you, if you can, to state what that garment is (handing Defendant's Exhibit 9 for identification to the witness)? A. This is a garment that the Shirtcraft Company manufactured and sold and distributed to its customers, I believe, as early as 1940; but I am definitely certain during 1941, in fairly large quantities running into hundreds of dozens.

Q. How long did your company continue to manufacture such a garment? A. We manufactured this garment into 1942, and we discontinued it at that time when we were not able to obtain zippers.

Q. What was a garment like Defendant's Exhibit 9 called by your company? A. This garment was called "The Stratomaster," it being intended to have it identified with aviation.

Q. How widely did your company distribute that garment among retailers? A. We distributed this garment on a national scale; I mean over many states throughout the country in large quantities.

Q. Do you know where that particular exhibit came from? A. This particular exhibit came from our Hazelton factory, where we had it in our files.

Q. That is Hazelton, where? A. Hazelton, Pennsylvania, where we have a factory.

Q. I call your attention to Defendant's Exhibit 7 for identification, and ask you if you are familiar with that folder (handing Defendant's Exhibit 7 for identification to the witness)? A. Yes, I am. We had this folder printed and used it as an envelope stuffer which we included with our bills to customers.

Q. Do you know when that folder was distributed by your company? A. That folder was distributed to our customers in 1941, just—it was then intended to stimulate sales for our fall business.

Q. Fall of when? A. Fall of 1941.

Q. Who printed that catalogue for you? A. This catalogue was printed by the Empire State Craftsmen; Mr. Eyerly is the President of that company.

Q. Referring to Defendant's Exhibit 7 for identification, will you state whether the jacket, Defendant's Exhibit 9 for identification, is illustrated in the folder, Defendant's Exhibit 7? A. Exhibit 9 is labeled "Stratomaster," and we have the illustration with the designation "Stratomaster" in the folder, to retail at $3.95.

Q. This garment Exhibit 9, you say, is the "Stratomaster"? A. Yes sir.

Q. Is the "Stratomaster" illustrated in the catalogue, Defendant's Exhibit 7? A. Yes, it is.

Q. Is that the same jacket as is shown in Defendant's Exhibit 9? A. Yes it is.

Q. Will you write your name under the particular illustration in that catalogue, Exhibit 7, which shows the jacket exemplified in Defendant's Exhibit 9? A. Yes, I will be glad to.

(Witness complies, and Mr. Horton hands Defendant's Exhibit 7 to Mr. Tjoflat.)

By Mr. Horton:

Q. I call your attention to the catalogue, Defendant's Exhibit 8 for identification, and ask you if you are familiar with that catalogue (handing Defendant's Exhibit 8 for identification to witness)? A. Yes, I am. This catalogue was printed and mailed to our customers in 1941.

Q. Who prepared that catalogue for you? A. Empire State Craftsmen, of which Mr. Eyerly is president.

Q. Does the catalogue, Defendant's Exhibit 8 for identification, illustrate the jacket exemplified by Defendant's Exhibit 9 for identification? A. It does contain that illustration.

Q. Next to that illustration in that catalogue will you please sign your name? A. I will be glad to.

(Witness complies.)

Q. The illustration which you so marked is on the second page of that catalogue, is it not? A. That is correct.

(Mr. Horton hands catalogue, Defendant's Exhibit 8, to Mr. Tjoflat.)

Mr. Horton: You may examine.

CROSS EXAMINATION

By Mr. Tjoflat:

Q. Referring now to Defendant's Exhibit 8 for identification, on the page on which you have just written your signature, there are four illustrations.

Which of the four did you intend to identify or associate with your signature (handing Defendant's Exhibit 8 for identification to witness)? A. I intended to identify the top illustration on the left side, and the top illustration on the right side of the page.

Q. The jacket shown by these two illustrations, where does the zipper start? A. It starts in the center of the garment.

Q. At the waistline? A. I cannot say the waistline; that depends on how the jacket is worn. It is at the bottom of the jacket.

Q. You testified that this Exhibit 8 for identification was mailed to your customers in 1941? A. That's correct.

Q. Is that date fixed by memory only? How do you fix that date? A. Well, we started to print these booklets in 1941, and we commenced to distribute those booklets at that time.

Q. But your recollection as to 1941, is it memory or is that memory refreshed by a record? How do you fix the date other than by your statement that it was mailed in 1941? A. I consulted our auditors as to the date when we paid for the art work and paid Empire State Craftsmen, and I was informed that that was in 1941.

Q. In other words, you were informed by someone else that that was the date? A. Informed by our auditors.

Q. This Exhibit 8 for identification contains a number of sheets. They are not numbered by page number are they? A. They are not numbered by page number, no.

Q. Is this a collection of sheets that were fastened to a backer by stapled clips, and were they sent out that way? A. They were sent out that way.

Q. Were they always sent out the same way? A. All sent out the same way, bound as you see there.

Q. Bound just as this exhibit shows A. That's right.

Q. Were ever any pages substituted as they went out? A. Never.

Q. How long did you send these booklets out as identified by Exhibit 8? A. That was sent out in one mailing.

Q. Over how long a period of time? A. Over probably one month's time, depending upon the facilities.

Q. So that these were sent out only during a period of a month? A. For the fall business, intended to stimulate the fall, 1941, business.

Q. How many years were they used? A. Only that one year.

Q. I want to refer you to Defendant's Exhibit 7 for identification. You wrote your signature on an illustration —your signature on a part of the exhibit where there is an illustration of a man with a jacket, and then off to the left of that is a smaller illustration on plain black and white? A. That's right.

Q. Is this the same jacket as you identified in Exhibit 8 (handing Defendant's Exhibit 7 for identification to witness)? A. Both illustrate the same jacket as in Exhibit 8. The top or larger illustration shows that jacket when worn open; the lower illustration on the left side shows the jacket when worn closed.

Q. But as in the case of Defendant's Exhibit 9 for identification, the zipper starts at the center of the bottom of the jacket? A. The zipper strts at the center of the bottom of the jacket.

Q. Concerning Defendant's Exhibit 9 for identification, the zipper starts at the center of the bottom of the jacket? A. The zipper starts at the center of the bottom of the jacket.

Q. Concerning Defendant's Exhibit 9 for identification, you testified that this came from your factory in Hazelton, Pennsylvania? A. That's correct.

Q. How did you know it came from there? A. It was forwarded to me from Hazelton.

Q. When was that? A. That was forwarded to me about five, six months ago.

Q. Was there any particular occasion for having it sent here? A. Yes, Mr. Darby asked for evidence, that we produce it, and we found that we had that jacket in Hazelton, and they sent it to me.

Q. But you don't know for sure when that jacket was made, do you? A. Well, it was made either in 1940 or in 1941.

Q. How would you know that? A. Because I have a recollection of having sold those jackets to certain customers, and having shipped those jackets to those customers.

Q. As to that particular jacket, you don't know whether it was made then or later? A. It could not have been made later. That jacket was made either in 1940 or 1941. We have not made jackets of that description since that time.

Q. But that jacket did not come into your possession until six months ago? A. That's correct.

Q. And you had not seen it before, that particular jacket? A. That particular jacket I have never seen before.

Q. And so then, of your own knowledge, you don't know that that jacket was in the factory from 1941 up to six month sago? A. Well, I can only go by information given to me by my brother, who runs the Hazelton factory.

Q. So that is not your own personal knowledge, that is knowledge given to you? A. What is that, not my knowledge?

Q. You mean, the information you got from your brother was information you received from him, and not of your own personal knowledge? A. That is correct.

Mr. Tjoflat: That is all.

REDIRECT EXAMINATION

By Mr. Horton:

Q. What is the name of your brother to whom you referred? A. Morris L. Kaplan.

Q. Did you receive this jacket, Exhibit 9, from your brother Morris? A. He mailed it to me.

Q. Is Mr. Morris Kaplan located in Baltimore? A. No, he is located in Hazelton.

Q. Is he at the factory? A. He runs the factory; he manages the factory.

Q. Did you see jackets identical with Exhibit 9 for identification during the period which you have specified? A. Well, in my position as sales manager, I also design, in addition to being sales manager I designed that jacket.

We operate a showroom in New York City where we have samples, and where we sell these jackets.

I have been handling these jackets and showing them to our customers. I recollect showing those jackets in 1941 and selling those jackets at that time.

Q. Is the Morris L. Kaplan, your brother whom you named, the Morris L. Kaplan whose name appears in the notice of deposition, and whose deposition is to be taken tomorrow at Baltimore? A. That is my brother, Morris Kaplan, the same one. I saw him yesterday in Hazelton and he told me that he would be in Baltimore tomorrow.

Mr. Horton: That is all.

Mr. Tjoflat: I have nothing further.

* * * * * *

Baltimore, Maryland.
December 17, 1948.

The following depositions were taken before me, Sidney Salzman, a Notary Public of the State of Maryland and City of Baltimore, duly commissioned and qualified; at the offices of The Shirtcraft Company, Inc. 1220 Curtain Avenue, Baltimore, Maryland at 1 o'clock p.m.

COUNSEL PRESENT: Gerald B. Tjoflat, Esq., of Cincinnati, Ohio, on behalf of the plaintiff; Thomas F. McWilliams, Esq. of Hinkle, Horton, Ahlberg, Hansmann & Wupper, of Chicago, Ill., on behalf of the defendant Squires, Inc.; John J. Darby, Esq. of Cushman, Darby & Cushman of Washington, D. C., and William Taft Feldman, Esq. of

Baltimore, Maryland, on behalf of the defendant The Richman Brothers Company, and the defendant United Shirt Distributors, Inc.

* * * * * *

Harry Thomas Kenvin,

a witness of lawful age, produced on call of the defendants, after being duly sworn by me, as hereinafter certified, was examined and deposed as follows:

DIRECT EXAMINATION

By Mr. McWilliams:

Q. Will you please state your name? A. Harry Thomas Kenvin.

Q. Where do you reside? A. 334 E. Chapel Street, Hazelton, Pennsylvania.

Q. By whom are you employed? A. By the Shirtcraft Company, Incorporated.

Q. How long have you been so employed? A. Twenty-five years, plus a few months.

Q. What is your occupation with that company? A. Occupation at the present time is Cutting Department Manager and Building Superintendent.

Q. Building Superintendent of what building? A. Of the Shirtcraft Building, 633 McKinley Street, Hazelton, Pennsylvania.

Q. I show you a document which has been marked for identification as Defendants' Exhibit 7, and ask you if you are familiar with that document? A. I am.

Q. What is it? A. This document is an advertising of jackets which the Shirtcraft Company made in 1941.

Q. Do you recall seeing catalogues of that type, Defendants' Exhibit 7 in and about 1941? A. I do.

Mr. Tjoflat: Object to the question referring to it as a catalogue. The witness referred to it as an advertising piece.

The Witness: It is an advertising pamphlet.

Q. Calling your attention to Defendants' Exhibit 7, and to the references "Airman Strato-master" and "Airman Sky-master," were garments of the type illustrated under those particular names manufactured and sold by the Shirtcraft Company? A. They were.

Q. Do you know when those particular garments of that type were sold? A. As far as the selling end of it is concerned, I have nothing to do with the selling end of it, but as far as the manufacturing is concerned I have records when I cut those particular jackets, and when they were made in the factory.

Q. Did you have anything to do with the making up of the patterns from which garments of the type identified as Airman Strato-master and Airman Sky-master were made? A. Being in the employ in the capacity in which I served of the Shirtcraft Company, and when I am told to make a particular pattern of a particular jacket, I so do that under orders as being employed by that particular company, and I did make the patterns for this particular jacket.

Q. Do you have here the patterns which you so made? A. I have.

Q. Will you make this for identification as Defendants' Exhibits 10 A, B, C and D, four pieces.

(patterns so marked)

Q. I show you some documents which have been marked for identification as Defendants' Exhibits 10 A, B, C and D, and ask you to state if you can what they are? A. What these are?

Q. Yes. A. These are the patterns for jackets Nos. 61 and 82 of 1941 and part of 1942.

Q. When you refer to 61, under what name was model number 61 sold? A. 61 was sold under the name of the Strato-master jacket.

Q. When you refer to Model number 82 under what name was that model sold? A. Sky-master jacket.

Q. What is your best recollection as to the date that you made the patterns for the Strato-master and Skymaster jackets? A. The best recollection to my mind of the date, I made these patterns in the beginning of May 1941, at which time we made samples of these particular garments, the two garments mentioned rather.

Q. By what incident, if any, do you fix the date of May, 1941? A. Well we moved from our old location on Second Street, 951 West Second Street, in approximately September 1941, and I know that these patterns were made prior to the moving of the plant from Second Street to our present location of 633 McKinley Street in Hazleton.

Q. Where have these particular patterns, Defendants' Exhibits 10 A, B, C and D, been since they were originally made? A. They have been in my cutting department over which I have supervision, and been retained by the markers which marks in the particular instructions as far as cutting garments is concerned.

Q. I notice that Defendants' Exhibits 10 A, B, C and D bear notations numbers 61 and 82. What do those notations mean? A. Those notations mean that when we get a cutting ticket to cut a particular garment that we refer to those garments with that number, so that there is no mistake of the markers getting ahold of the wrong patterns.

Q. Were these patterns actually used in the production of Model 61 Strato-master and Model 82 Sky-master? A. They were.

Q. Can you fix the earliest date that such patterns were used for the cutting of forms for those models? A. The patterns as far as sizes 1, 2, 3 and 4 is concerned, the first cutting made of that was made in the week of August 1, 1941 under cut number 5501, 5502, 5503, 5504, and 5505.

Mr. Tjoflat: Let the record show the witness is testifying with reference to a ledger.

Mr. Feldman: Not a ledger, a book.

Q. What is the document or book which you are using, if any, to refresh your recollection? A. This is the record of all of the cuttings of the years of 1941 and 1942.

Q. By whom were the entries in that book made? A. The entries in this book was made by one Anna Belazzi, who is now Mrs. John DeLuca.

Q. Were those entries made under your supervision? A. They were.

Q. Were they made in the regular course of business of the Shirtcraft Company? A. They were.

Q. Has that book been in your possession since the entries were made? A. It has been.

Q. Can you refer to other portions of that book and indicate subsequent dates upon which cuttings were made from the patterns, Defendants' Exhibits 10 A, B, C and D?

Mr. Tjoflat: Object to that question, unless the book is identified as an exhibit.

Mr. McWilliams: Would you prefer Mr. Tjoflat to have the book itself in evidence? I am trying not to clutter up the record with exhibits, but if you object to his reading from them——

Mr. Tjoflat: It is all a matter of how you ask the question.

Mr. McWilliams: Wouldn't you like to look at that book and satisfy yourself as to its authenticity, because it is a

part of the records of the Company. You can go around and look at it if you will.

Mr. Tjoflat: All right, I will look at it, but off-the-record, may I make this suggestion.

(off-the-record discussion followed)

Mr. Tjoflat: I will have the witness point out to me the items that he has referred to in fixing the dates he has testified to.

Mr. Feldman: Will you read the last question?

(question read by the reporter)

A. On August—the week of August 22nd we cut number 82, which was a Sky-master, under cuts 5003 and 5004.

Continue on with answering the last question. You referred to one additional, which I understand appears on page 153. Will you point out the additional cuttings cut from the patterns Defendants' Exhibits 10 A, B, C, and D? A. Here is 5001 on September 12th—5003, I mean.

Q. What was the name appearing in that book at page 156 for which those cuttings were made? A. The Airman Sky-master, and Farra.

Q. Will you refer to some additional ones? A. We have on page 158, 5006 which is the oyster-lined Sky-master for Bond, 5007 tan-lined Sky-master for Johnny Farra and Airman. 5008, oyster, Davega.

Q. Under what date were those latter cuttings made? A. September 26, 1941.

Q. On what page of your book do they appear? A. Page 158.

Q. With respect to the entries in this book, how are these entries made as compared with the dates on which the work was done? A. The entries was made from the cutting instructions when the particular garment was being cut

in the Cutting Department, so that we could compile a record not only of the particular garment that was cut in the particular ranges that we manufactured, but that we could have a record of the number of dozens which the cutting department made that particular week.

Q. Were the entries in the book made at or about the dates the cuttings were made or some different date? A. They were made on or about the dates the cuttings were made.

Q. You have referred to the 5000 series. Does that have any relationship to the model numbers? A. 5000 number was our cutting number in regard to jacket number 82.

Q. You referred to another series. Does that have any relationship to any model number? A. The cutting number 5500 is our identification or cut number in regard to jacket number 61, which is known as the Strato-master.

Q. Do the figures you have been referring to indicate the volume of cuttings? A. They do.

Q. The last one you referred to on page 158, will you state the volume of cuttings on that particular day? A. The entire volume 880 dozen.

Q. What was the volume of the cuttings for model number 82? A. The entire volume of cuttings——

Q. For that particular day. A. That was what I gave you, 880.

Q. And what is the date, I don't believe you gave the date for that last cutting? A. The week of September 26, 1941.

Q. Are there additional instances in that book showing cuttings for both models numbers 61 and 82? A. There are.

Q. Again, Mr. Tjoflat, we are endeavoring to keep from cluttering up the record with some of these books and

records of the corporation, and we offer to make available this book to you for your own inspection at this time or any time.

Mr. Tjoflat: Are you going to produce that book at the trial?

Q. If you want it. I show you a jacket which has been marked for identification as Defendants' Exhibit 11, and ask you if you can state what it is? A. This jacket is a Sky-master jacket number 82, that was made by the Shirtcraft Company and was cut under my supervision.

Q. Is there any way you can fix the date upon which the material for that jacket, Defendants' Exhibit 11 was cut? A. By the stamp mark on the bottom of the left hand side of the front of the jacket, which indicates that it was stamped under cut number 5011. That jacket was cut on or during the week of November 14, 1941.

Q. By what do you fix that particular date? A. By the record, which occurs on page 165 of our cutting report, which says cut number 5011, tan, which is the color of the outside of the garment, lined in plaid, which is lined in plaid (indicating the garment exhibit), and it was cut under labels of Bond and Airman Sky-master. The total amount of cuttings of that particular cut of 5011 was 612 dozen.

Q. In the ordinary course of business after the cuttings have been completed, how long does it take to make up those cuttings into a completed garment? A. I would say on a normal production between three and four weeks.

Q. Was the jacket marked for identification as Defendants' Exhibit 11 cut from the patterns marked for identification as Defendants' Exhibits 10 A, B, C and D? A. It was.

Q. Was the same pattern used for both models? A. Yes, it was.

Q. What is the difference between the model 61 Strato-master and model number 82 Sky-master? A. The difference between the model of 61 Strato-master and the model 82 Sky-master is that the model 61 Strato-master is not lined entirely. The model 82, which is the Sky-master, is lined with a different material, or in this one particular case, the lining is plaid.

Q. That is referring to Defendants' Exhibit 11? A. 11.

Q. Have the patterns for models 61 and 82 been changed at any time from the very first time these patterns were cut? A. They have not.

Q. All of the subsequent cuttings for both models 61 and 82 were made from what patterns? A. From those patterns.

Q. And by those patterns you are referring to Defendants' Exhibits 10 A, B, C and D? A. I am.

Q. Are these particular patterns which have been marked for identification here for a particular size? A. That pattern is marked for size 2.

Q. Do you also have available here the patterns for the other sizes? A. I have.

Q. Except for the dimensions to take care of the different sizes, are there any differences in the patterns? A. None whatsoever.

Q. Let's have this marked for identification as Defendants' Exhibit 12.

(book marked Defendants' Exhibit 12)

Q. This book which has just been marked for identification as Defendants' Exhibit 12 is the book to which you have been referring in refreshing your recollection, is that right? A. It is.

Q. That has to do with the records of cuttings as you have been testifying about them? A. Yes.

Mr. McWilliams: You may cross-examine.

CROSS EXAMINATION

By Mr. Tjoflat:

Q. Mr. Kenvin, I want to ask you a couple of questions. Defendants' Exhibits 9 and 11 for identification, the zipper on each of the jackets identified by these exhibit numbers starts at the center at the bottom of the jacket on the front? A. Yes.

Q. In the center, is that right? A. That is right, center.

Q. There is no suggestion that this zipper starts from the point of the collar and runs off diagonally to the hip? A. No.

Q. And that is true of both of these jackets? A. Yes.

Q. Exhibits 9 and 11? A. Yes.

Q. And you have never made any jackets of that style say prior to 1945 where the zipper would start off at the point of the collar and run off diagonally to the hip? A. To my knowledge I would say no.

Q. Now these patterns which you have referred to and which were identified as Exhibits 10 A, B, C and D, were these garments actually cut from these patterns, or are these block patterns? A. They were actually cut from those patterns.

Q. Do you use block patterns? A. No we don't use block patterns in that particular instance.

Q. Now regarding the dates that you have testified to concerning when these various jackets were made, those dates you obtained from your record book? A. I have.

Mr. Tjoflat: I haven't anything further. Oh, now this jacket, Defendants' Exhibit 11, that appears to be quite soiled?

A. Yes.

Q. Where did it come from? A. Came from one of the employees of the Shirtcraft Company who had it all these years.

Q. What do you mean by all these years? A. Since it was manufactured, and the date as given of manufacture was——

Q. Do you know he has had it all this time or that he got it from Shirtcraft Company in the first instance? A. Well, that I can't tell, whether he got it from Shirtcraft or whether he bought it from anyplace else.

Q. I believe you testified earlier that there is some way you can identify a garment and tell when it was cut, the particular date. How do you do that? A. The cut number, the size, and the bundle number. This cut number is referred to in our records on page 165 as cut number 5011, tan, is the outer color of the material, plaid, is the interior lining.

Mr. Feldman: Could he identify the place on the garment where that appears?

Q. Now this cut number that you have just referred to appears on the inside at the lower left hand corner? A. That is what I said.

Q. The number 5011 is what, that is the cut number? A. That is the cut number, and also designates the style of the garment.

Q. Now the 2 M, what does that mean? A. That means its size, size 2 or size Medium.

Q. What does the 44 mean? A. The bundle number. The bundle number, when we cut garments we have those garments tied up into different bundles, and that refers to the bundle number so it makes it easier in the operation of the garment in the stitching department that they can follow the different parts.

Q. It couldn't possibly mean the year '44? A. No.

Q. Now where on this jacket Exhibit 9 do you have a corresponding identification? A. On this jacket Exhibit number 9 is a corresponding identification on the left hand side of the front of the jacket down at the bottom. This particular jacket happens to be a sample jacket.

Q. What is the serial number on that jacket? A. Well it is pretty well washed out of the fore part of that jacket. It looks like——

Q. Doesn't it look like 2599, M 1? A. I don't know whether that front part, I can't see. Looks to me like 599, no 2 in front of it at all.

Q. I would like the reporter to note that there is a faint number showing right in front of that number 5——

Mr. McWilliams: Well what do you mean by note? If you want him to testify about it I think anybody can testify as to what they think they may see in there. I think the exhibit speaks for itself.

Mr. Tjoflat: What do you make that——

Mr. Feldman: No point in our testifying. It is going to be shown to the Court I assume.

Mr. Tjoflat: That is all the questions I have.

RE-DIRECT EXAMINATION

By Mr. McWilliams:

Q. You have been testifying with respect to two types of jackets, one known as the Strato-master and another one called the Sky-master. Calling your attention to Defendants' Exhibit 8, is the Sky-master illustrated anyplace in that exhibit? A. Here is the Sky-master. The Strato-master is exhibited we will say on Page 2, and the Sky-master is exhibited on Page 4.

Mr. McWilliams: Do you have any objection to any photostat of page 4 going to the Detroit court? I believe in the

depositions yesterday the testimony was limited to Page 2 of Exhibit 8?

Mr. Tjoflat: You put it in.

Q. Will you sign your name across page 4 of this exhibit alongside the representation of the Sky-master?

(the witness did so)

Mr. McWilliams: And it is agreed that photostats of Page 4 may go to the Detroit court as well as photostat of the 2nd page of Defendants' Exhibit 8 for identification?

Mr. Tjoflat: That is right. In other words, the photostats of the pages on which the two signatures appear.

Mr. McWilliams: Correct. That is all.

(testimony of deponent concluded)

Mr. McWilliams: Do you have any objection, are you willing to waive the reading and signing of your deposition?

Mr. Kenvin: I will waive that right.

STIPULATION

Mr. McWilliams: It is stipulated by and between counsel for plaintiff and defendants that the deposition given by Mr. Kenvin, that his signature and reading of the deposition are waived.

Thereupon:

Samuel M. Woronoff,

a witness of lawful age, produced on call of the defendants, after being duly sworn by me, as hereinafter certified, was examined and deposed as follows:

DIRECT EXAMINATION

By Mr. McWilliams:

Q. Will you please state your full name? A. Samuel M. Woronoff.

Q. Your residence? A. 4212 Oakford Avenue, Baltimore, Maryland.

Q. By whom are you employed? A. By the Shirtcraft Company, Inc.

Q. How long have you been so employed? A. Since February 12, 1921.

Q. What are your duties with this Company? A. My official title is Auditor, which requires charge of all records and accounting departments of the Company.

Q. How long have you been the Auditor for the Company? A. Since approximately July, 1921.

Q. You were asked were you not if you could locate any invoices showing sales of models numbers 62 or 81? A. 61 and 82.

Q. 61 and 82 by the Shirtcraft Company? A. I was asked.

Q. Have you been able to locate any invoices showing sales of garments identified by those model numbers? A. Considerable number of them.

Q. With respect to model number 61, have you been able to—what is the earliest date on any invoice showing the sale of garments of that type? A. Earliest shipment was on August 5, 1941.

Q. Will you produce such an invoice? A. Here is one of a number of them. Shipment forwarded on August 5, 1941.

Q. Will you mark this Defendants' Exhibit 13 for identification?

(so marked)

Q. I show you a document which has been marked for identification as Defendants' Exhibit 13, and ask you to state if you can what that is? A. This document is one

of the duplicates of the original invoice covering a shipment made on August 5th, 1941, to Richman Brothers, 206 South Washington Avenue, Lansing, Michigan. This invoice was billed to Richman Brothers Company at their main office, 1600 E. 55th Street, Cleveland, Ohio.

Q. Does that show the sale of any jackets under the model number 61? A. This invoice number 35,005 lists among other items one-quarter dozen of lot 61-4, and one quarter dozen of lot 61-5.

Q. What are the 4 and 5 for? A. The 4 and 5 are the colors of the outside shell.

Q. Where did you get that particular document which has been marked for identification, Defendants' Exhibit 13? A. This document came from our file for Richman Brothers, Cleveland, Ohio for 1941.

Q. Was that record made in the ordinary course of business? A. That record was made in the ordinary course of business.

Q. On what kind of a machine are records of that kind made? A. This was made on a billing machine, a Burroughs-Moon-Hopkins billing machine.

Q. In the make-up of the document Defendants' Exhibit 13, on or about what date was the date August 5, 1941 placed on it? A. In the usual course of events that entire invoice would have been made on the following business day after August 5, 1941.

Q. Where has Defendants' Exhibit 13 been since August 5, 1941? A. Has been in our files in this building.

Q. Referring to Defendants' Exhibit 13 there is reference to 61 then a space, then the numeral 4. What does the numeral 4 refer to? A. The numeral 4 refers to the color of the outside shell of the jacket.

Q. Will you mark this for identification as Defendants' Exhibit 14.

(exhibit so marked)

Q. If you have no objection, Mr. Tjoflat, I would like to detach from Exhibit 14 the yellow sheet which is attached to it, and which I don't propose to rely upon. I propose to do the same thing with respect to Defendants' Exhibit 13.

What are these yellow sheets which are attached to the invoice? A. These yellow sheets are called charges. They are made in duplicate, the original of which goes to our shipping department to enable it to pick the order and ship the order. After the order is picked the original is enclosed within one of the cases or cartons of the shipment, and is intended as a shipping record from which the customer can ascertain the content of the shipment. The copy in front of me is the duplicate. That goes to our billing department for billing from which this Exhibit 13 was made.

Q. Mark this Defendants' Exhibit 15.

(so marked)

Q. I show you two documents which have been marked for identification Defendants' Exhibits 14 and 15, and ask you to state if you can what they are? A. Defendants' Exhibit No. 14 is an invoice of shipment No. 35,008, forwarded on August 6, 1941 to Richman Brothers, 1515 Farnam Street, Omaha, Nebraska, and billed to their main office at 1600 E. 55th Street, Cleveland, Ohio.

Defendants' Exhibit No. 15 is one of the duplicates of original billing of shipment number 34,972 covering a shipment forwarded on August 6, 1941 to Richman Brothers Company at 1600 E. 55th Street, Cleveland, Ohio.

Do Exhibits 14 and 15 indicate the shipment of any jackets model number 61? A. Exhibit No. 14 includes one half dozen of lot number 61-4, and one half dozen of lot number 61-5.

Exhibit No. 15 includes 5 and three-quarters dozen of Lot No. 61-4, and 5 and three quarters dozen of lot No. 61-5.

Q. Do Exhibits 13, 14 and 15 cover invoices for goods actually shipped to the customer? A. They all are invoices for goods actually shipped to customers in accordance with our shipping records of that time.

Q. Do you have in front of you additional invoices covering the shipment of model number 61? A. Yes, I do.

Q. Will you please refer to them and read off four or five indicating the date of the invoice and to whom the shipment was made and how many of model number 61? A. Invoice number 34,956 covers shipment made on August 5, 1941 to Richman Brothers Company, 538 Main Street, Johnstown, Pennsylvania, and billed to their main office at 1600 E. 55th Street, Cleveland, Ohio, and includes one half dozen of Lot 61-4, and one-half dozen of Lot 61-5.

Invoice Number 34,960 covers shipment made on August 5, 1941 to Richman Brothers Company, 5224 Nicolette Street, Minneapolis, Minn., and billed to their main office at 1600 E. 55 Street, Cleveland, Ohio, and includes three-quarters dozen of Lot 61-4, and three-quarters dozen of Lot 61-5.

Invoice number 34,952 covers shipment made on August 5, 1941 to Richman Brothers Company, 333 Main Street, Buffalo, New York, and billed to their main office at 1600 E. 55th Street, Cleveland, Ohio, and includes one-half dozen of Lot 61-4, and one-half dozen of Lot 61-5.

Invoice number 35,014 on August 5, 1941 to Richman Brothers Company, 15 North High Street, Columbus, Ohio,

and billed to their main office at 1600 E. 55th Street, Cleveland, Ohio, includes one-quarter dozen of Lot 61-4, and one-quarter dozen of Lot 61-5.

Invoice 34,964 covers shipment forwarded on August 5, 1941 to Richman Brothers Company, 29 E. Main Street, Springfield, Ohio, and billed to their main office at 1600 E. 55th Street, Cleveland, Ohio, and includes one-half dozen of Lot 61-4, and one half dozen of Lot 61-5.

Q. Now with respect to model number 82, have you been able to locate any invoice covering the shipment of model 82? A. I have located a number of invoices of that model number.

Q. Will you produce the earliest invoice you have been able to locate covering model 82? A. The earliest invoice I have located covering shipment of Lot No. 82 is invoice no. 278099, dated September 19, 1941, and covers a shipment to the Cobbs Men's Store, Tahoga, Texas, and includes 4/12 dozen of Lot 82-5.

Q. Will you mark these for identification as Defendants' Exhibits 16, 17 and 18?

(papers so marked)

Q. I show you documents which have been marked for identification as Defendants' Exhibits 16, 17 and 18, and ask you if you can state what they are? A. Documents marked Exhibits Nos. 16, 17 and 18 are carbons of the original invoices covering shipments forwarded to our customers. These documents were taken from our sales books containing invoices sorted in numerical order and kept for each month.

Q. Where have those documents been since they were prepared? A. These documents have been in our plant until recently when they were stored outside of the plant temporarily.

Q. Were the entries made on the forms Defendants' Exhibits 16, 17 and 18 made in the regular course of business? A. They were made in the regular course of business.

Q. Do any of those exhibits indicate the shipment of model 82? A. All three of these exhibits indicate the shipment of Lot no. 82.

Q. Have you been able to locate additional invoices covering the sales of both models 61 and 82? A. Yes, sir, I have.

Q. Approximately how many invoices do you have covering both of those model numbers? A. Approximately 750 invoices.

Q. Have you reviewed these approximately 750 invoices to which you have just referred? A. Yes, I have.

Q. Have you made any compilations of those invoices? A. I have made a listing of all the invoices containing Lots 61 and 82 which were physically contained in one particular book.

Q. Are all of the original invoices themselves here and available for inspection? A. The original invoice in accounting terminology is the one sent with the order, but a duplicate of the original is here for your examination.

Q. All of the corporation's copies of the invoices referred to in the compilation are present and available for inspection? A. They are.

Q. Will you mark this for identification as Defendant's Exhibit 19.

(compilation so marked)

Q. I show you a document which has been marked for identification as Defendants' Exhibit 19, and ask you to state if you can what that is? A. Document 19 is a listing of all invoices that I have located containing Lots 61

and 82 for the period beginning in August 1941 and ending on December 31, 1941, plus one additional invoice forwarded in January, 1942.

Q. Was that compilation, Defendants' Exhibit 19, made by you, or under your supervision? A. It was made under my supervision.

Q. When was that done? A. That was made December 15, 1948.

Q. Does this compilation, Defendants' Exhibit 19 constitute a summary of the 750 invoices you referred to? A. That is a summary of the approximately 750 invoices which I located within the last ten days.

Q. Will you mark this for identification as Defendants' Exhibit 20?

(paper so marked)

Q. I show you a document which has been marked for identification as Defendants' Exhibit 20, and ask you to state if you can what that is? A. That is a listing made under my supervision on December 16, 1948 of all invoices containing lots 61 and 82 from one of the sales books for September, 1941, the sales book containing invoice numbers 279,000 to 280,562 inclusive.

Q. How many sales books are there? A. There are, depending upon the number of shipments made during the month, from four to ten sales books per month. They are bound into books of a certain thickness, so that we do not have a definite number of books each month.

Q. Approximately how many sales books were there which contained information relative to the shipments of models numbers 61 and 82? A. I located 19 sales books for the period of August 1941 to December 1941 inclusive, which contained invoices including shipments of models 61 and 82.

Q. So that defendants' Exhibit 20 is a summary of only one of the 19 sales books, is that correct? A. That is correct.

Q. Was Defendants' Exhibit 20 made by you or under your supervision? A. It was made under my supervision.

Q. Did you make any calculations to determine the number of dozens of models 61 and 82 which were cut in the cutting department? A. I did.

Mr. Tjoflat: Object to the question referring to the cutting department. He hasn't said anything about the cutting department as yet.

Q. Go ahead, answer the question. A. From our files I obtained our cutting reports, furnished as supplied, from our cutting department in our Hazleton, Pennsylvania factory, and therefrom arrived at totals of 876 and 4/12 dozen of the 61 lined jackets cut from August to December 31, 1941, and 4227 and 4/12 dozen of Lot 82 cut in 1941.

Q. Where did you get the information from which your last answer was given? A. As stated in my last answer I obtained the information from the cutting reports, which I obtained from my files.

Q. Those files are kept under your supervision? A. Those files are kept under my supervision.

Q. And there again that answer with respect to the number of dozens of model number 61 and model number 82 represents a summary of these cutting records? A. That is a summary of the total dozen cut which I obtained from the cutting reports in the files kept in Baltimore.

Q. Are those original source records from which this summary is made presently available for inspection by counsel? A. They are, sir.

* * * * * *

By Mr. Tjoflat:

Q. How long were the jackets identified by style numbers 61 and 82 sold? A. They were sold till our stock was completely sold out.

Q. When was that? A. I am not in position to answer that question.

Q. Beg your pardon? A. I couldn't answer that question immediately.

Q. The invoices that you have testified about, Exhibits 13 through 18, all are dated in 1941, is that correct? A. That is correct.

Q. Were any sales of jackets represented by styles 61 and 82 sold after 1941? A. There were, and I have on my compilation one such invoice. However, I made no effort to locate any records in connection with these two numbers for any period after December 31, 1941.

Q. Are you still selling the Sky-master, Exhibit 11, and the Strato-master, Exhibit 9? A. No, we are not selling them now. We disposed of the last of our stock some time ago.

Q. How long ago? A. As I said before I am not in position to answer that question now.

Q. Do you have the records as to when you discontinued or disposed of the last of your stock? A. I doubt whether we have stock records to that extent. The stock records are not a major record once the number is discontinued.

Q. Wouldn't you have invoices? A. Oh, yes, I would have invoices, but I couldn't give you the last date without going through each and every invoice since 1941, and if you realize we make approximately 400 shipments a day, you can realize what a problem it would be to look for 400 shipments every day since 1942 to find out what was the last number.

Q. Did you sell any after 1942? A. That is not within my department to know off-hand just when each number was sold, no, I couldn't answer that question.

Q. Could you find out?

Mr. McWilliams: I think we will have a witness who will have more information on that subject, and if you want to drop that particular subject matter with the right to recall this particular witness if you don't get the information from one of the other witnesses, I am agreeable to it.

Mr. Tjoflat: Well, I don't care from whom, what witness I get it from, as long as some one here gives the information that is available. That is all.

Mr. McWilliams: Are you willing to waive the reading and signing of your deposition?

The Witness: I am.

STIPULATION

Mr. McWilliams: It is stipulated by and between counsel that the reading and signature of the witness are waived. Thereupon:

Morris L. Kaplan,

a witness of lawful age, produced on call of the defendants, after being duly sworn by me, as hereinafter certified, was examined and deposed as follows:

DIRECT EXAMINATION

By Mr. McWilliams:

Q. Will you please state your full name? A. Morris L. Kaplan.

Q. Where do you reside? A. 149 North Chase Street, Hazleton, Pennsylvania.

Q. Are you an officer of the Shirtcraft Company, Incorporated? A. Vice-President, and in charge of production.

Q. How long have you been associated with that Company? A. Since I was—I was the originator, right after the World War No. 1.

Q. I show you a jacket which has been marked for identification as Defendants' Exhibit No. 9, and ask you where you got this particular jacket? A. This jacket was located in Hazelton by one of our men named Johnny Allen.

Q. Does he reside in Hazleton? A. Yes.

Q. About how long ago did you get that particular jacket, Defendants' Exhibit 9? A. Oh, I would say about several months, about four or five months I would say.

Q. What did you do with it after you got it? A. Sent it to New York.

Q. To whom in New York? A. Charles Kaplan, Empire State Building. Where he lives I don't know, it is Long Island.

Q. I show you another jacket which has been marked for identification as Defendants' Exhibit 11, and ask you where you got this particular jacket? A. This I got in Hazleton from Clarence—he's got a middle name—Arlotta.

Q. Is he an employee of the Company? A. Presently, yes. He left from our Company, he went into business, but now he came back to us. He is an employee at present.

Q. Is he employed in your Hazleton factory? A. Yes, sir.

Q. When did you first produce this particular jacket? A. About two or three weeks ago I would say. I ask them whose got a jacket, and he brought me the jacket.

Q. Calling your attention to Defendants' Exhibit 11 and Defendants' Exhibit 9, were these jackets manufactured by the Shirtcraft Company, Inc.? A. Yes.

Q. During what period of time were such jackets manufactured and sold? A. In '41, the early part of '41.

Q. That is 1941? A. Yes.

Q. I asked you a minute ago when you first produced this jacket, and you referred to a particular employee. By that answer did you mean you got that jacket from that employee? A. Yes, sir, he wore it. He bought it some time ago, and he had it, and in order to get the information I asked if he has got it. He told me he had it, and he brought it in to the office.

Q. When was the first time you produced it to show to either Mr. Darby or me? A. This morning I believe, this morning.

Q. Do you know approximately how long you continued in the manufacture of jackets of the type identified as Defendants' Exhibit 9 and 11? A. Early in '41.

Q. Do you know how long you continued to sell such jackets? A. We sold them until approximately about '43, as long as we had these zippers on hand, as long as they lasted, then we had to discontinue because we couldn't get no zippers on account of restrictions during the war.

Q. Is Mr. Johnny Allen from whom you said you got the jacket Defendants' Exhibit 9 an employee of your Company? A. Yes.

Q. Did you get Defendants' Exhibit 9 from Johnny Allen? A. That is right. I wouldn't say—Mr. Kenvin brought it in from Johnny Allen, and I gave Mr. Kenvin a jacket to trade it in to give Johnny Allen another jacket because it is his personal jacket.

Mr. McWilliams: That is all.

CROSS EXAMINATION

By Mr. Tjoflat:

Q. If I understood you correctly you did not yourself obtain the jacket directly from Johnny Allen, that someone else got it from Johnny Allen? A. Johnny Allen works for my office, about 180 feet distant, and I see Johnny Allen several times a day, couldn't help it, but he brought me in this jacket from Johnny Allen. Personally I didn't speak to Johnny Allen about getting the jacket.

Q. In other words, some one else got it? A. Mr. Kenvin got it from him. Johnny Allen is under the supervision of Mr. Kenvin. It would not be up to me to go looking for his—that was his regular routine of running his business.

Q. You are not making jackets according to Exhibits 9 and 11 now, are you? A. No.

Q. Have you made them at all since 1943? A. No.

Q. Or about that time? A. No. We couldn't make it, we didn't have the zippers, and it doesn't look good without zippers.

Q. In other words, since about 1943 you have not made this, it's been a discontinued model? A. Discontinued model since 1943.

Q. Could that model have been discontinued in 1942? A. Well I would say '42, '43, it is hard to tell. Sometime we may make back in 1943 a half dozen to fill in a scale of prices. It may be a large quantity or small quantity. This you have to refer to the books.

Q. Would you have any records which would show exactly—— A. In this book.

Q. ——when you manufactured the last jacket? A. Whenever the book will tell, that is it.

Q. Referring to Defendants' Exhibit 12,—— A. Page 150 or 153 tells you.

Q. Would you look at the book and tell us when the book says the last jackets according to Exhibits 9 and 11 were made? A. Ordinarily I am not a book man, and I would have to refer to my management.

Mr. Feldman: Mr. Kenvin is still here. We will recall Mr. Kenvin, and ask him to show it to you, if the book shows it. A. He will tell you exactly. Our organization consists of 1500 to 1800 people, and very seldom I look on this, except ask for them.

Mr. Tjoflat: That is all I have.

Mr. McWilliams: Are you willing to waive the reading and signature of your deposition?

The Witness: Yes, sir.

STIPULATION

Mr. McWilliams: Pursuant to the stipulation of counsel, the reading and signature of the witness to the deposition are waived.

(testimony of the deponent concluded)

Thereupon:

Harry Thomas Kenvin,

who had previously been sworn, further deposed as follows:

By Mr. Tjoflat:

Q. When was the manufacture of jackets according to Defendants' Exhibits 9 and 11 stopped or discontinued? A. We discontinued in 1942, due to the fact we couldn't get any zippers.

Mr. Kaplan: It is hard to remember dates. I am sure in '41 because we know something happened in '41, we went in, and discontinued in '42.

Thereupon:

Maynard Samuel Stillman,

a witness of lawful age, produced on call of the defendants, after being duly sworn by me, as hereinafter certified, was examined and deposed as follows:

DIRECT EXAMINATION

By Mr. McWilliams:

Q. Will you please state your full name? A. Maynard Samuel Stillman.

Q. What is your address? A. 7002 Park Heights Avenue.

Q. In what city? A. Baltimore, Maryland.

Q. By whom are you employed? A. Shirtcraft Company, Inc.

Q. How long have you been so employed by that Company? A. Since 1927.

Q. What is your occupation with that company? A. Department head in the Order Department.

Q. Have you ever had anything to do with the sales work of the Corporation? A. Yes.

Q. During what period of time? A. You mean by sales work selling?

Q. Yes. A. Between 1927 and 1933.

Q. Are you familiar with the products manufactured and sold by the Corporation? A. Yes.

Q. Calling your attention to two jackets, Defendants' Exhibits 9 and 11, I ask you if those are jackets manufactured and sold by Shirtcraft Company, Incorporated? A. They are.

Q. Do you know during what period of time jackets of that type were manufactured and sold by the Company? A. 1941.

Q. Will you mark this for identification as Defendants' Exhibit 21.

(paper so marked)

Q. I show you a document which has been marked for identification as Defendants' Exhibit 21, and ask you if you can state what this is? A. That is our price list for 1941.

Q. Approximately when was that price list compiled? A. Usually the prices go out for fall about May of that year.

Q. Was that particular document used within the organization in connection with the sale of products manufactured by the Company? A. I don't quite get what you mean.

Q. Was that particular document, Defendants' Exhibit 21 used in connection with the sale of products by the Shirtcraft Company? A .Yes, the salesmen, each one gets a copy of this price list.

Q. Where has been the document Defendants' Exhibit 21 since 1941? A. Where has this been? This has been in my possession.

Q. This has been in your possession since 1941? A. Continually.

Q. Up until what time? A. Up until Wednesday of this week.

Q. I call your attention to Page 5 of Defendants' Exhibit 21 and ask you to state whether or not there appears on this page a reference to model 61 and model 82? A. Both of them are listed on Page 5 of this exhibit.

Q. Is there any relationship between model 61 and the name Strato-master? A. It is one and the same.

Q. Is there any relationship between model 82 and Skymaster? A. One and the same.

Q. Are jackets of the type identified as Defendants' Exhibits 9 and 11 jackets referred to under the model numbers 61 and 82 on page 5 of Defendants' Exhibit 21? A. Yes.

Mr. McWilliams: That is all. You may cross-examine.

Mr. Tjoflat: No questions.

Mr. McWilliams: Are you willing to waive the reading and signature of your deposition?

The Witness: Yes.

(testimony of deponent concluded)

STIPULATION

Mr. McWilliams: Pursuant to agreement, it is hereby stipulated by and between counsel that the reading and signature of the deposition of the witness are waived.

• • • • • •

June 10, 1947. M. M. BROHARD, JR Des. 146,895

SHIRT

Filed Dec. 23, 1944

Fig. 1.

Fig. 2.

INVENTOR
Montie M. Brohard Jr.
BY
Zugelter & Zugelter
Atty's.

Patented June 10, 1947 Des. 146,895

UNITED STATES PATENT OFFICE

146,895

DESIGN FOR A SHIRT

Montie M. Brohard, Jr., Cincinnati, Ohio

Application December 23, 1944, Serial No. 117,655

Term of patent 14 years

(Cl. D3—25)

To all whom it may concern:

Be it known that I, Montie M. Brohard, Jr., a citizen of the United States of America, residing at Cincinnati, in the county of Hamilton, State of Ohio, have invented a new, original, and ornamental Design for a Shirt, of which the following is a specification, reference being had to the accompanying drawing, forming part thereof.

Fig. 1 is a front view of a shirt showing my new design.

Fig. 2 is a rear view of the shirt.

I claim:

The ornamental design for a shirt, as shown.

MONTIE M. BROHARD, Jr.

REFERENCES CITED

The following references are of record in the file of this patent:

UNITED STATES PATENTS

Number	Name	Date
2,143,931	Aronson	Jan. 17, 1939
D. 113,201	Coleman	Jan. 31, 1939

OTHER REFERENCES

Sears, Roebuck catalog #181, 1940, p. 407, item 41F5650.

Sept. 30, 1947. M. M. BROHARD, JR 2,428,198

GARMENT

Filed Jan. 25, 1945

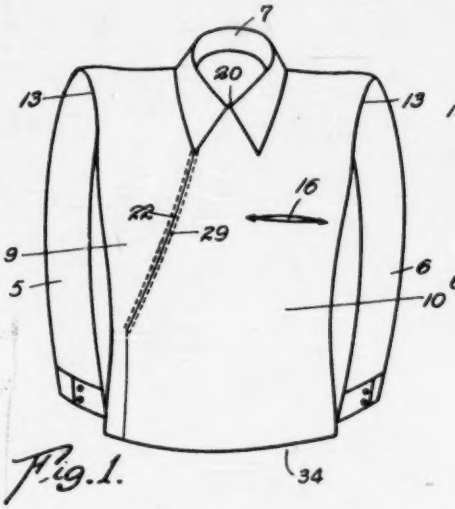

Fig. 1.

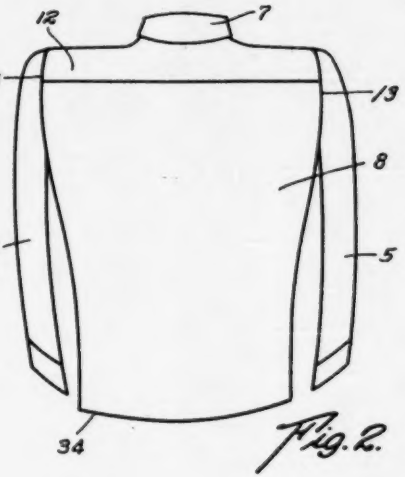

Fig. 2.

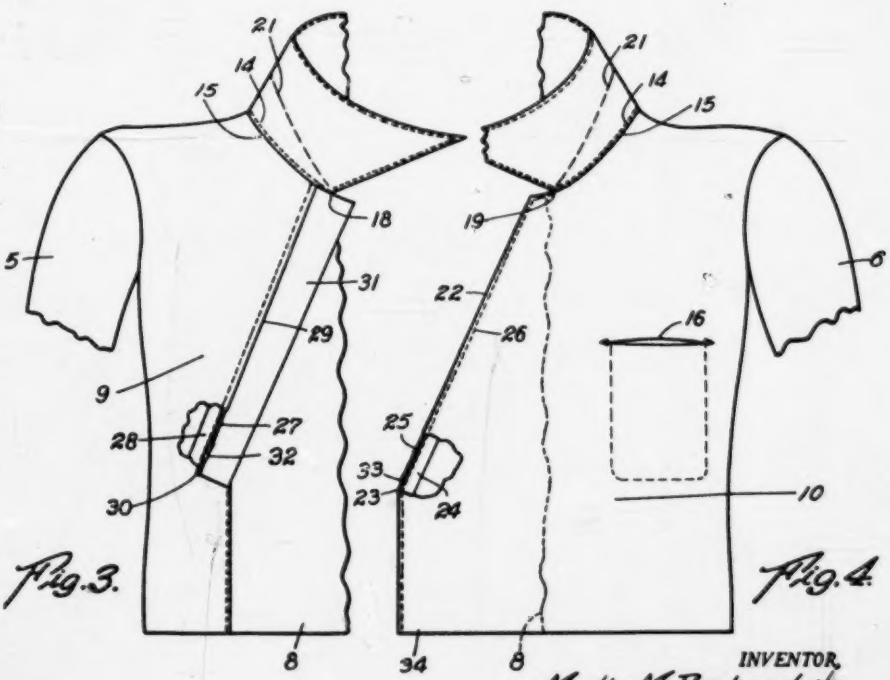

Fig. 3.

Fig. 4.

INVENTOR,
Montie M. Brohard, Jr.
BY
Zugelter & Zugelter
Atty's.

Patented Sept. 30, 1947 369 2,428,198

UNITED STATES PATENT OFFICE

2,428,198

GARMENT

Montie M. Brohard, Jr., Norwood, Ohio

Application January 25, 1945, Serial No. 574,500

1 Claim. (Cl. 2—96)

1

This invention relates to a garment, and concerns particularly a shirt or jacket of the single-breasted variety, embodying certain features of construction which improve the garment in various respects.

An object of the invention is to provide a garment construction which enhances the over-all appearance and comfort of the garment.

Another object is to improve the effectiveness of the garment in providing maximum protection against cold and drafts.

Another object is to provide a garment construction wherein cutting and assembly of the constituent parts are simplified and expedited, with a resultant conservation of labor and expense.

Another object is to provide a shirt or jacket which may be quickly donned and removed by the wearer.

Another object is to provide a garment of the character stated, which presents a smooth unbroken bosom portion of agreeable appearance, and which may be worn in good taste either with or without a necktie, scarf, or the like.

Another object is to so construct the garment that the smooth unbroken bosom portion is exposed to present an attractive plain front, when a coat is worn over the garment in the conventional manner.

The foregoing and other objects are attained by the means described herein and illustrated in the accompanying drawing, in which:

Fig. 1 is a front view showing the garment as it appears upon the person of the wearer.

Fig. 2 is a rear view of the same.

Fig. 3 is an enlarged fragmental view showing approximately the left half of the garment as viewed in Fig. 1, but in a flattened condition.

Fig. 4 is a view similar to Fig. 3, showing the other half of the garment.

The principal parts of the garment are the sleeves 5 and 6, the collar 7, the back 8, and the dissimilar but complementary bosom sections 9 and 10. The sleeves may be attached to the back and bosom sections, and to the yoke 12, in the customary manner by means of stitching along the seams 13. The collar likewise is attached to these parts by means of stitching 14 applied along the collar seam 15. One or more pocket openings 16 may be provided in the bosom section 10, if desired.

The bosom section 10 will be seen to cover considerably more than half of the chest and abdomen of the wearer, as it extends across the center-line of the wearer's body from one side thereof. The center-line passes vertically

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through the foremost attachment points 18 and 19 of the collar at the collar seam 15. These points 18 and 19 substantially coincide when the garment is worn, to form the collar apex 20 (Fig. 1). The broken line 21 in Figs. 3 and 4 indicates the line of fold-over for the collar, which will be seen to terminate at the front of the collar seam near the attachment points 18 and 19. The fold line extends across the back of the collar at an elevation above the collar attachment seam 15. Thus, when the collar is in the normal folded-over condition, it presents the appearance of Figs. 1 and 2 at the front and rear, respectively.

Whereas the bosom section 10 extends from one side of the garment over and across the center-line at the front thereof, the complementary bosom section 9 extends from the other side of the garment to cover an area considerably less than the area at its own side of the center-line. It is important to note that the bosom sections do not overlap and thereby form a double-breasted garment. The garment, on the contrary, is single breasted.

The over-center portion of bosom section 10 is cut and hemmed to provide an obliquely disposed fastener edge 22, which extends from the approximate location 10 obliquely downwardly and away from the garment center-line, to waist elevation at a point 23. This point 23 is located approximately upon the hip-bone of the wearer, or in other words, well advanced toward the side of the garment when disposed upon the wearer's body, as in Fig. 1. From the location 23, there extends upwardly along the oblique edge 22, the mounting tape 24 of a slide fastener section 25, which terminates at the upper end of said edge 22 near the collar anchor point 10. The slide fastener section 25 preferably underlies the edge 22 and is substantially concealed thereby. The stitching 26 that hems the edge 22, may serve also to anchor the slide fastener tape, if desired.

The counterpart of the slide fastener, indicated at 27, has its mounting tape 28 attached along the oblique edge 29 of bosom section 9. Edge 29, like edge 22, is straight and will preferably cover and conceal the slide fastener section. The obliquely directed edge 29 and its slide fastener section extend from a lower terminus 30, to the approximate location of collar anchorage point 18. The lower terminus 30 coincides with the terminus 23 of section 10 when the garment is properly worn. An underlay or narrow flap 31, which may extend along the full length of fastener section 27, performs the usual function

of backing up the joint formed when the fastener is closed, and preventing entanglement of underclothing or the like with the fastener during the opening and closing operations. The part 31 is disposed practically wholly to that side of the garment center-line which includes the smaller bosom section 9. That is to say, the narrow part 31 cannot properly be considered an element capable of rendering the garment a double-breasted type of garment, by common definition.

The character 32 indicates the slidable key of the slide fastener, and 33 indicates the usual separable bottom stop element which permits separation of the fastener sections when the key or slide is moved to its lowermost limit of travel. Slide fasteners of this type are very well known, and for that reason need not be disclosed in detail herein.

The garment herein disclosed is capable of various obvious alterations within the spirit of the invention. For example, the collar and sleeves might be omitted, if desired, and the tail portion 34 might readily be converted into a waist band of any acceptable type. Also, the slide fastener might be so mounted as to be exposed when closed, or it may be omitted entirely and replaced with buttons, hooks, or any other form of fastening means. The pocket, of course, may be dispensed with under certain circumstances, or might even be increased in number depending upon the service to be performed by the garment. Various other changes in structural details may be made, within the knowledge and skill of the designer, without departing from the spirit of the invention.

What is claimed is:

A garment comprising a front and back, terminating in an upper neckline, a fold-over collar attached at said line and having flap portions overlying said front on opposite sides of the vertical center line of the front, and having the ends of the lines of fold thereof meeting at the vertical center line of the front, said front comprising two portions, one of said portions extending at the neckline across the vertical center line of the front and terminating beneath the flap of said collar, said other portion terminating on said neckline beneath said flap at the point of termination of the first-mentioned portion, said two front portions having meeting edges extending diagonally from said point of meeting of said portions at the neckline aforesaid toward the hip of the wearer located on the same side of the vertical center line of the front as is said point, and a slide fastener for securing said meeting edges along said diagonal line, the upper terminus of said slide fastener lying beneath said collar flap so as to be concealed thereby and the front of the garment between the flaps of the collar being unbroken by said diagonally extending meeting edges.

MONTIE M. BROHARD, JR.

REFERENCES CITED

The following references are of record in the file of this patent:

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Number	Name	Date
1,675,113	Lake	June 26, 1928
1,951,240	Gold	Mar. 13, 1934
1,993,297	Greenberg	Mar. 5, 1935

FOREIGN PATENTS

Number	Country	Date
376,657	Great Britain	July 14, 1932
428,833	Great Britain	May 20, 1935
502,889	Germany	July 23, 1930

PLAINTIFF'S EXHIBIT 11
STIPULATION

It is stipulated by and between counsel for the within plaintiffs and defendant, that if Bernard Rudofsky, of New York City, New York, were called by plaintiffs as a witness to testify in the above entitled cause, that he would testify as follows:

1. That he is Director of Apparel Research, The Museum of Modern Art, 11 West 53rd Street, New York City, New York.

2. That he was born and educated in Austria where he received degrees in Engineering and Architecture, and that he holds as well, a degree of Doctor of Philosophy; that he has traveled and lived for years in various countries and has engaged in studies of many subjects, including art; that he maintained architect's offices for five years in Italy, and for three years in Brazil; and that he has been a resident of New York City, New York, since 1941.

3. Since taking up residence in New York, within a period of three years, The Museum of Modern Art in New York showed his work three times: viz., as Industrial Designer and a winner of Inter-American Design Competition; as Brazilian architect in "Brazil Builds"; and as creator and director of the exhibition "Are Clothes Modern?" held at the Museum of Modern Art in New York for an extended period commencing on November 28, 1944; that he has been editor and art director in Italy, and twice in this country, the United States of America; that he has designed exhibitions, stage sets, furniture and apparel.

4. He is the author of the book entitled "Are Clothes Modern?" which was published by Paul Theobald of Chicago, Illinois, in 1947, the book having been printed in the U. S. A. by Poole Bros., Inc.; and that exhibits 2, 3, 4,